TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 442

UNITED STATES OF AMERICA, APPELLANT,

vs.

JAMES J. CARROLL

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI

Filed November 7, 1952

Jurisdiction Postponed December 15, 1952

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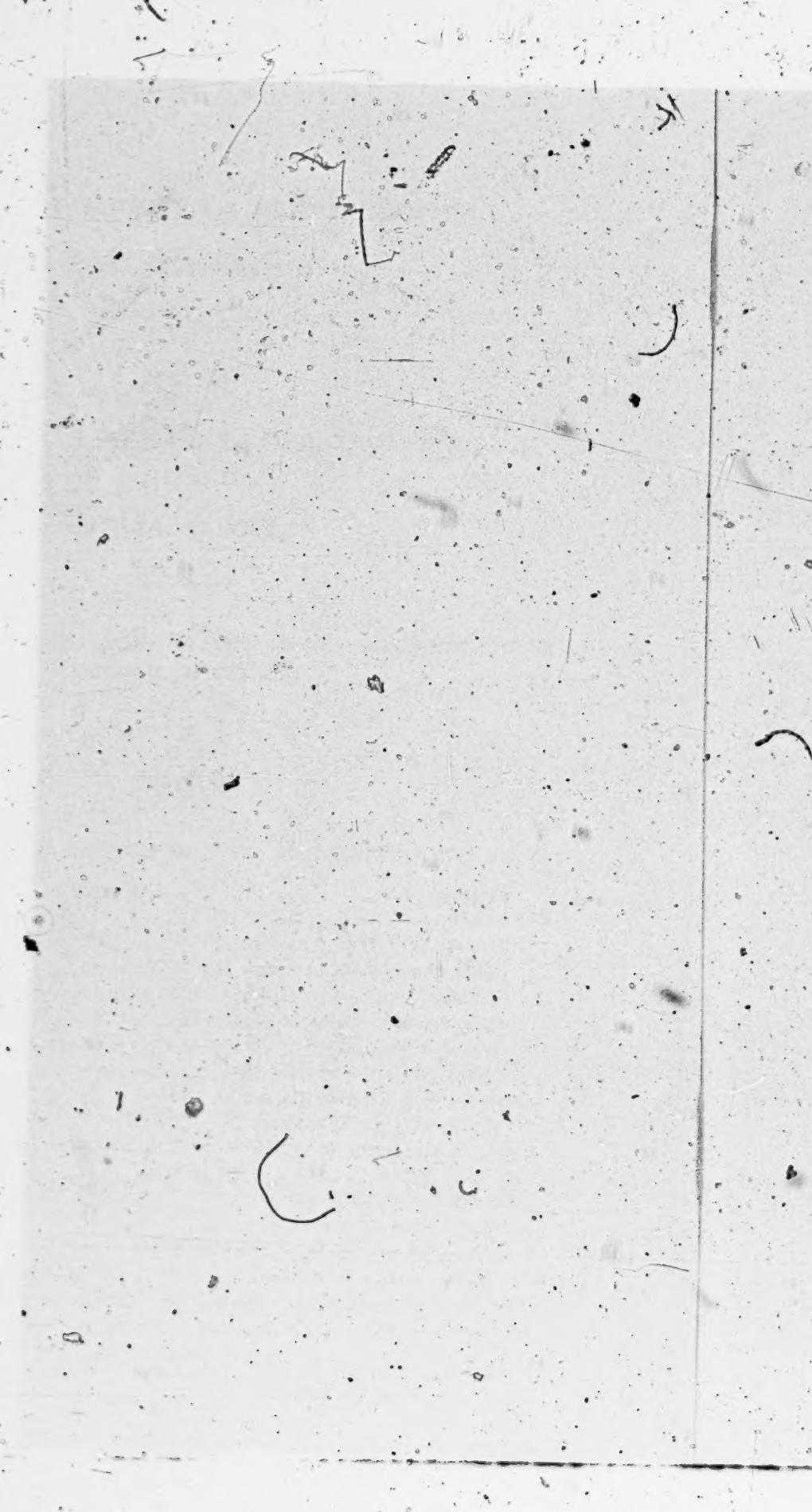
INDEX.



IN UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

No. 18188

UNITED STATES OF AMERICA, *Plaintiff*,

vs.

JAMES J. CARROLL, *Defendant*.

Indictment—Filed December 14, 1951

The Grand Jury charges:

COUNT 1

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Carl Abbott, 416 West Morgan, Sedalia, Missouri, of the sum of $7,536.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C. Section 145(a).

COUNT 2

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Cobe Ablan, also known as Cobe R. Ablan, 1824 Russell Avenue, St. Louis, Missouri, of the sum of $800.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Rev-

enue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment and the and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 3

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to E. L. Archer, 920 South Main, Hope, Arkansas, of the sum of $1,392.35, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

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COUNT 4

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Berridge & Rumer, also known as Barrage & Rumer, a copartnership consisting of Harry R. Berridge and Frank J. Rumer, located at 104 North Second, Vincennes, Indiana, of the sum of $6,471.25, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make

said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 5

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Walter Bohnisch, also known as Walter Bonisch, 216 North Oxford Street, Lindsay, California, of the sum of $2,733.80, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper office of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

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COUNT 6

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Patrick Clifford, also known as Pat Clifford, 4612 Margaretta, St. Louis, Missouri, of the sum of $800.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 7

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to R. J. Collins, 4712 Westminster, St. Louis, Missouri, of the sum of $700.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 8

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to James F. Dill, 1124 Crescent Drive, Sedalia, Missouri, of the sum of $2,880.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said ames J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 9

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to R. A. Duff, Hotel Floridan, Tallahassee, Florida; of the sum of $1,223.50, and that under the provisions of Section 147 of

the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

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COUNT 10

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Charles J. Dyer, 2011 East Fair Avenue, St. Louis, Missouri, of the sum of $800.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C. Section 145(a).

COUNT 11

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to J. L. Ferguson, in care of Matts News Stand, located at 331 Fourth Avenue North, Nashville, Tennessee, of the sum of $15,807.75, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the

Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C. Section 145(a).

9 COUNT 12

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to E. R. Frieje, also doing business as Paramount Club, whose address is Post Office Box 127, Terre Haute, Indiana, of the sum of $83,563.45, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C. Section 145(a).

COUNT 13

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, [illegible]e of Missouri, made payment to J. J. Glazer, 612 S. Alvord, Evansville, Indiana, of the sum of $1,600.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts,

the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C. Section 145(a).

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COUNT 14

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to E. E. Green, 159 Lindero Ave., Lindsay, California, of the sum of $1,837.15, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C. Section 145(a).

COUNT 15

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Wilson C. Haight, Sr., also known as Bill Haight, whose address is Route 2, Ann Arbor, Michigan, of the sum of $1,580.30, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C. Section 145(a).

11 COUNT 16

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Leo J. Hennessy, also known as L. Hennessey, 5821 Mimika Street, St. Louis, Missouri, of the sum of $2,600.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 17

That during the calendar year 194 , JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to R. J. Herrmann, also known as Richard J. Herrmann, 3241 Trinity Road, Louisville, Kentucky, of the sum of $18,918.10, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

12 COUNT 18

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made pay-

ment to Roy C. Hultburg, also known as Roy Hultburg, Roy Jultburg, Ray Hultburg, and Ray Hultberg, 282 Fifteenth Street, N. W., Cedar Rapids, Iowa, of the sum of $1,877.80, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 19

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Philip L. Joseph, also known as Philip Joseph, Phil Joseph, and Philip Joseph, 2706 Wooldridge Drive Austin, Texas, of the sum of $25,909.75, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

13 COUNT 20

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to J. Raymond Levi, also known as J. R. Levi, whose address is Post Office Box 244, Berryville, Virginia, of the sum of $59,780.05, and that under the provisions of Section 147 of the Internal

Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri; setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 21

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Ralph Lowe, whose address is Post Office Box 832, Midland, Texas, of the sum of $40,301.50, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

14 COUNT 22

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to A. V. Mabry, 3612 North Spring, St. Louis, Missouri, of the sum of $2,600.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the

aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 23

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Clarence Marks, also known as C. Marks, doing business as Monroe Commission Co., whose address is Post Office Box 1303, Monroe, Louisiana, of the sum of $25,693.15, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commisisoner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

15 COUNT 24

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Raymond Massud, also known as Ray Massud, 4160 Tyrolean, St. Louis, Missouri, of the sum of $4,000.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commis-

sioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 25

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to C. J. McElroy, 727 Hoskins Street, Lufkin, Texas, of the sum of $1,345.50, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 26

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Raymond E. Muckerman, also known as Ray Muckerman, Route 2, Chesterfield, Missouri, of the sum of $800.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 27

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Chas. P. Orchard, also known as C. P. Orchard, Park Plaza Hotel, St. Louis, Missouri, of the sum of $4,000.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

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COUNT 28

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Oscar Pfeiffer, doing business as R. L. Kilpatrick & Co., whose address is 1430 Claytonia Terrace, Richmond Heights, Missouri, of the sum of $1,800.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C. Section 145(a).

COUNT 29

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Joseph H. Popp, whose address is 3626 So. Broadway, St.

Louis, Missouri, of the sum of $800.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C. Section 145(a).

COUNT 30

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Richard J. Rae, also known as Dick Rae and Dick Roe, whose address is 417 Johnstone, Bartlesville, Oklahoma, of the sum of $651.85, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code, 26 U.S.C., Section 145(a).

COUNT 31

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Charles J. Rich, also known as Chas. Rich and C. J. Rich, whose address is 8201 Balson, University City, Missouri, of the sum of $139,902.50, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required

on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

19

COUNT 32

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to J. A. Rose, also known as Joseph Rose, whose address is Post Office Box 274, Edina, Missouri, of the sum of $4,000.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 33

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Maurice A. Ryan, also known as M. A. Ryan and Maury Ryan, whose address is 35 Klainecrest, Fort Thomas, Kentucky, of the sum of $9,830.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the re-

cipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

20

COUNT 34

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to H. W. Sapp, 415 Washington Street, Henderson, Kentucky, of the sum of $989.35, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 35

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Harry Schendel, 2710 South Grand Avenue, St. Louis, Missouri, of the sum of $800.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 36

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Harry Scott, also known as Henry Scott, whose address is Maryville, Missouri, of the sum of $642.75, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 37

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Judge Anton Sestric, whose address is 3137 Allen Avenue, St. Louis, Missouri, of the sum of $4,000.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 38

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to W. E. Simmons, whose address is Big Springs, Texas, of the sum of $693.85, and that under the provisions of Section 147

of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 39

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to R. W. Stoneking, also known as R. W. Stonking, whose address is Bushnell, Illinois, of the sum of $24,399.35, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 40

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to R. G. Wales, 510 - 8th Street, Wichita Falls, Texas, of the sum of $973.15, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of

the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 41

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to John E. Finnell, also known as Dred Finnell, whose address is 1521 East 48th Street Terrace, Kansas City, Missouri, and who was a partner in the partnership known as Walnut Recreation, of the sum of $9,700.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 42

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Ray Whitledge, whose address is Frankfort, Kentucky, of the sum of $6,892.25, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any othter proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 43

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Bettie Woodall, also known as Betty Woodall, whose address is 1206 South College Street, Stuttgart, Arkansas, of the sum of $1,416.10, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

25

COUNT 44

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Herbert M. Woolf, whose address is 5049 Wornall Road, Kansas City, Missouri, of the sum of $39,793.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 45

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made pay-

ment to Sam Ziegman, in care of Baseball Headquarters, Omaha, Nebraska, of the sum of $43,225.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

26

COUNT 46

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to E. L. Archer, 920 So. Main, Hope, Arkansas, of the sum of $2,575.05, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 47

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to F. R. Arthurhultz, also known as Arthur Holtz, and A. Holtz, 703 Main Street, Buchanan, Michigan, of the sum of $886.40; and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury De-

partment Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

27

COUNT 48

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Berridge & Rumer, a co-partnership doing business as No. 8 Recreation Club consisting of Harry R. Berridge and Frank J. Rumer, located at 101 North Second, Vincennes, Indiana, of the sum of $7,416.60, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 49

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Walter Bohnisch, also known as Walter Bonisch, 216 No. Oxford Street, Lindsay, California, of the sum of $1,341.50, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment;

that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

28

COUNT 50

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Ben Saathoff, New Castle, Indiana, and who is a partner in the partnership known as Castle Cigar Store, of the sum of $3,332.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 51

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to R. J. Collins, 4712, Westminister, St. Louis, Missouri, of the sum of $900.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

29 COUNT 52

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Downey-Walsh, also known as D. & W. Cigar Store, a partnership consisting of James Downey and Thomas Walsh, and which is located at 617 Columbus Street, Ottawa, Illinois, of the sum of $3,852.50, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 53

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to R. A. Duff, Hotel Floridan, Tallahassee, Florida, of the sum of $1,355.85, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

30 COUNT 54

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to J. L. Ferguson, in care of Matts News Stand, located at

331 Fourth Avenue North, Nashville, Tennessee, of the sum of $8,217.75, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 55

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to E. R. Frieje, also known as E. R. Freije, doing business as Paramount Club, whose address is Post Office Box 127, Terre Haute, Indiana, of the sum of $55,598.25, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 56

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to John Froschhouser, also known as John Froschhesuer, John Froschueser, John Frosheuseur, John Fraushheauser, and John Froeschheuser, 511 So. Burlington, Hastings, Nebraska, of the sum of $1,415.75, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Sec-

tion 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 57

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Thomas Georgeff, also known as Tom Georgeff, 205 So. Ludlaw, Dayton, Ohio, of the sum of $1,195.25, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

32

COUNT 58

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to E. E. Green, 159 Lindero Avenue, Lindsay, California, of the sum of $632.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of

the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 59

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Wilson C. Haight, Sr., also known as Bill Haight, Route 2, Ann Arbor, Michigan, of the sum of $2,413.20, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

33 COUNT 60

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to William Hecht, also known as Wm. Hecht, whose address is Calhoun Beach Hotel, Minneapolis, Minnesota, of the sum of $11,248.60, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 61

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to R. J. Herrmann, 3241 Trinity Road, Louisville, Kentucky, of the sum of $3,724.60, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 62

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Roy C. Hultburg, also known as Roy Hultburg, 282 Fifteenth Street N.W., Cedar Rapids, Iowa, of the sum of $823.55, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 63

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made pay-

ment to Philip L. Joseph, also known as Phil Joseph, 2706 Wool dridge Drive, Austin, Texas, of the sum of $29,121.75, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

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COUNT 64

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to J. Raymond Levi, also known as J. R. Levi, Post Office Box 244, Berryville, Virginia, of the sum of $15,045.55, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 65

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Ralph Lowe, whose address is Midland, Texas, of the sum of $147,605.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the

Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C. Section 145(a).

COUNT 66

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Clarence Marks, also known as C. Marks, doing business as Monroe Commission Co., whose address is Post Office Box 1303, Monroe, Louisiana, of the sum of $14,524.55, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carrell was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C. Section 145(a).

COUNT 67

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to H. M. Pender, 1625 Commerce, Little Rock, Arkansas, of the sum of $12,400.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and know-

ingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C. Section 145(a).

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COUNT 68

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Oscar Pfeiffer, doing business as R. L. Kilpatrick, 1430 Claytonia Terrace, Richmond Heights, Missouri, of the sum of $16,379.25, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C. Section 145(a).

COUNT 69

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Lauerdo Ladgie Proctor, also known as Ray Proctor, 1435 Seventh Avenue, Sacramento, California, of the sum of $700.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C. Section 145(a).

COUNT 70

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Charles J. Rich, also known as Chas. Rich and C. J. Rich, 8201 Balsome Avenue, University City, Missouri, of the sum of $166,115.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C. Section 145(a).

COUNT 71

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Maurice A. Ryan, also known as Maury A. Ryan, and M. A. Ryan, whose address is 35 Klainecrest, Fort Thomas, Kentucky, of the sum of $36,330.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C. Section 145(a).

COUNT 72

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Harry Scott, whose address is Maryville, Missouri, of the

sum of $656.10, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C. Section 145(a).

COUNT 73

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Charles C. Spink, 2018 Washington Avenue, St. Louis, Missouri, of the sum of $2,982.80, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C. Section 145(a).

COUNT 74

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to R. W. Stoneking, doing business as Korn Club, whose address is Bushnell, Illinois, of the sum of $31,936.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before Feburary 15, 1950 to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri,

setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C. Section 145(a).

COUNT 75

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to John E. Finnell, also known as Dred Finnell, whose address is 1521 East 48th Terrace, Kansas City Missouri, and who was a partner in the partnership known as Walnut Recreation, of the sum of $69,142.50, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C. Section 145(a).

COUNT 76

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to E. J. White, 116 Market Street, Hattiesburg, Mississippi, of the sum of $949.80, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to mak a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to

any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C. Section 145(a).

COUNT 77

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Roy Whitledge, whose address is Frankfort, Kentucky, of the sum of $5,977.20, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C. Section 145(a).

COUNT 78

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Bettie Woodall, also known as Betty Woodall, whose address is 1206 South College Street, Stuttgart, Arkansas, of the sum of $1,966.40, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C. Section 145(a).

COUNT 79

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Herbert M. Woolf, 5049 Wornall Road, Kansas City, Missouri, of the sum of $23,907.95, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C. Section 145(a).

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COUNT 80

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Edward K. Yamato, also known as Eddie Yamato, and E. Yamato, 2918 Lafayette Street, Denver, Colorado, of the sum of $3,215.50, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 81

That during the calendar year 1949, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Sam Ziegman, in care of Baseball Headquarters, Omaha,

Nebraska, of the sum of $72,650.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

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COUNT 82

That during the calendar year 1950, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Frank Ackerman, in care of the Smoke House, and whose address is Post Office Box 1019, Galesburg, Illinois, of the sum of $12,424.50, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1951, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 83

That during the calendar year 1950, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Berridge & Rumer, a co-partnership doing business as No. 8 Recreation Club, consisting of Harry R. Berridge and Frank J. Rumer, located at 101 North Second, Vincennes, Indiana, of the sum of $5,782.60, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1951, to make a return on United States

Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

45 COUNT 84

That during the calendar year 1950, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Ben Saathoff, New Castle, Indiana, and who is a partner in the partnership known as Castle Cigar Store, of the sum of $3,140.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1951, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 85

That during the calendar year 1950, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Downey-Walsh, also known as D. & W. Cigar Store, a partnership consisting of James Downey and Thomas Walsh, and which is located at 617 Columbus Street, Ottawa, Illinois, of the sum of $13,525.85, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1951, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of

the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

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COUNT 86

That during the calendar year 1950, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to J. L. Ferguson, in care of Matts News Stand, located at 331 Fourth Avenue North, Nashville, Tennessee, of the sum of $17,955.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1951, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 87

That during the calendar year 1950, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Thomas Georgeff, also known as Tom Georgeff, 205 South Ludlaw, Dayton, Ohio, of the sum of $22,783.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended; the said James J. Carroll was required on or before February 15, 1951, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

47 COUNT 88

That during the calendar year 1950, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to E. W. Henderson, whose address is Post Office Box 361, Charlotte, North Carolina, of the sum of $1,790.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1951, to make a return on United States Treasury Department, Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 89

That during the calendar year 1950, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Philip L. Joseph, also known as Phil Joseph, 2706 Wooldridge Drive, Austin, Texas, of the sum of $7,563.40, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1951, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

48 COUNT 90

That during the calendar year 1950, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made pay-

ment to J. Raymond Levi, also known as J. R. Levi, whose address is Post Office Box 244, Berryville, Virginia, of the sum of $9,602.15, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1951, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 91

That during the calendar year 1950, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Dr. Richard A. Lewis, also known as Dr. R. A. Lewis, whose address is East Raineile, West Virginia, of the sum of $13,920.45, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1951, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

49 COUNT 92

That during the calendar year 1950, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Ralph Lowe, whose address is Post Office Box 832, Midland, Texas, of the sum of $9,450.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1951, to make a return on

United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 93

That during the calendar year 1950, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Clarence Marks, also known as C. Marks, doing business as Monroe Commission Co., whose address is Post Office Box 1303, Monroe, Louisiana, of the sum of $28,709.70, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1951, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did
50 willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 94

That during the calendar year 1950, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Oscar Pfeiffer, doing business as R. L. Kilpatrick & Co., whose address is 1430 Claytonia Terrace, Richmond Heights, Missouri, of the sum of $6,320.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1951, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the

recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 95

That during the calendar year 1950, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Lauerdo Ladgie Proctor, also known as Ray Proctor, 1435 Seventh Avenue, Sacramento, California, of the sum of $1,800.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or be-
51 fore February 15, 1951, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 96

That during the calendar year 1950, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Charles J Rich, also known as Chas. Rich and C. J. Rich, 8201 Balsom Avenue, University City, Missouri, of the sum of $217,375.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1951, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 97

That during the calendar year 1950, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Maurice A. Ryan, also known as Maury A. Ryan and
52 M. A. Ryan, whose address is 35 Klainecrest, Fort Thomas, Kentucky, of the sum of $4,270.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1951, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 98

That during the calendar year 1950, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to John E. Finnell, also known as Dred Finnell, whose address is 1521 East 48th Street Terrace, Kansas City, Missouri, and who was a partner in the partnership known as Walnut Recreation, of the sum of $11,350.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1951, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code;
53 26 U.S.C., Section 145(a).

COUNT 99

That during the calendar year 1950, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Ray Whitledge, whose address is Frankfort, Kentucky, of the sum of $1,958.30, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1951, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 100

That during the calendar year 1950, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Herbert M. Woolf, whose address is 5049 Wornall Road, Kansas City, Missouri, of the sum of $12,060.65, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1951, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said
54 Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 101

That during the calendar year 1950, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Sam Ziegman, in care of Baseball Headquarters, Omaha, Nebraska, of the sum of $44,785.00, and that under the provisions of Section 147 of the Internal Revenue Code and

Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1951, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

A True Bill.

EDYTHE L. SHELBY
Foreman

SAM M. WEAR
Sam M. Wear
United States Attorney

HARRY F. MURPHY
Harry F. Murphy
Assistant United States Attorney

FREDERICK M. SELTZER
Frederick M. Seltzer
Special Assistant to the United States Attorney

IN UNITED STATES DISTRICT COURT

No. 18189

UNITED STATES OF AMERICA, *Plaintiff*,

vs.

JAMES J. CARROLL, *Defendant*

Indictment—Filed Dec. 14, 1951

The Grand Jury charges:

COUNT 1

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made the following payments to the following persons:

Payee	Address	Total Payment
Carl Abbott	416 West Morgan Sedalia, Missouri	$7,536.00
Cobe Ablan (also known as Cobe R. Ablan)	1824 Russell Avenue St. Louis, Missouri	800.00
E. L. Archer	920 So. Main Hope, Arkansas	1,392.35
Berridge & Rumer (also known as Barrage & Rumer, a co-partnership consisting of Harry R. Berridge and Frank J. Rumer)	101 North Second Vincennes, Indiana	6,471.25
Walter Bohnisch (also known as Walter Bonisch)	216 No. Oxford Street Lindsay, California	2,733.80
Patrick Clifford (also known as Pat Clifford)	4612 Margaretta St. Louis, Missouri	800.00
R. J. Collins	4712 Westminster St. Louis, Missouri	700.00
James F. Dill	1124 Crescent Drive Sedalia, Missouri	2,880.00
R. A. Duff	Hotel Floridan Tallahassee, Florida	1,223.50
Charles J. Dyer	2011 East Fair Avenue St. Louis, Missouri	800.00
J. L. Ferguson	c/o Matts News Stand 331 Fourth Avenue North Nashville, Tennessee	15,897.75
E. R. Frieje (also doing business as Paramount Club)	Post Office Box 127 Terre Haute, Indiana	83,563.45
J. J. Glazer	612 S. Alvord Evansville, Indiana	1,600.00
E. E. Green	159 Lindero Avenue Lindsay, California	1,837.15

Payee	Address	Total Payment
Wilson C. Haight, Sr. (also known as Bill Haight)	Route 2 Ann Arbor, Michigan	1,580.30
Leo J. Hennessy (also known as L. Hennessey)	5821 Mimika Street St. Louis, Missouri	2,600.00
R. J. Herrmann (also known as Richard J. Herrmann)	3241 Trinity Road Louisville, Kentucky	18,918.10
Roy C. Hultburg (also known as Roy Hultburg, Roy Jultburg, Ray Hultburg, and Ray Hultberg)	282 Fifteenth Street, N. W. Cedar Rapids, Iowa	1,877.80
Philip L. Joseph (also known as Phillip Joseph, Phil Joseph, and Philip Joseph)	2706 Wooldridge Drive Austin, Texas	25,909.75
J. Raymond Levi (also known as J. R. Levi)	Post Office Box 244 Berryville, Virginia	59,780.05
Ralph Lowe	Post Office Box 832 Midland, Texas	40,301.50
A. V. Mabry	3612 No. Spring St. Louis, Missouri	2,600.00
Clarence Marks (also known as C. Marks, doing business as Monroe Commission Co.)	Post Office Box 1303 Monroe, Louisiana	25,693.15
Raymond Massud (also known as Ray Massud)	4160 Tyrolean St. Louis, Missouri	4,000.00
C. J. McElroy	727 Hoskins Street Lufkin, Texas	1,345.50
Raymond E. Muckerman (also known as Ray Muckerman)	Route 2 Chesterfield, Missouri	800.00
Chas. P. Orchard (also known as C. P. Orchard)	Park Plaza Hotel St. Louis, Missouri	4,000.00
Oscar Pfeiffer (doing business as R. L. Kilpatrick & Co.)	1430 Claytonia Terrace Richmond Heights, Missouri	1,800.00
Joseph H. Popp	3626 So. Broadway St. Louis, Missouri	800.00
Richard J. Rae (also known as Dick Rae and Dick Roe)	417 Johnstone Bartlesville, Oklahoma	651.85
Charles J. Rich (also known as Chas. Rich and C. J. Rich)	8201 Balsom University City, Mo.	139,902.50
J. A. Rose (also known as Joseph Rose)	Post Office Box 274 Edina, Missouri	4,000.00
Maurice A. Ryan (also known as M. A. Ryan and Maury Ryan)	35 Klainecrest Fort Thomas, Kentucky	9,830.00
H. W. Sapp	415 Washington Street Henderson, Kentucky	989.35
Harry Schendel	2710 S. Grand Avenue St. Louis, Missouri	800.00
Harry Scott (also known as Henry Scott)	Maryville, Missouri	642.75
Judge Anton Sestric	3137 Allen Avenue St. Louis, Missouri	4,000.00

Payee	Address	Total Payment
W. E. Simmons	Big Springs, Texas	693.85
R. W. Stoneking (also known as R. W. Stonking)	Bushnell, Illinois	24,399.35
R. G. Wales	510 8th Street Wichita Falls, Texas	973.15
E. Finnell (also known as Dred Finnell) and who was a partner in the partnership known as Walnut Recreation)	1521 East 48th Street Terrace Kansas City, Missouri	9,700.00
Ray Whitledge	Frankfort, Kentucky	6,892.25
Bettie Woodall (also known as Betty Woodall)	1206 So. College Street Stuttgart, Arkansas	1,416.16
Herbert M. Woolf	5049 Wornall Road Kansas City, Missouri	39,793.00
Sam Ziegman	c/o Baseball Headquarters Omaha, Nebraska	43,225.00

and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or be-
58 fore February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1096, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the number of returns on Form 1099 attached thereto; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return, Form 1096, to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

Count 2

That during the calendar year 1949, James J. Carroll, who was a resident of the City of St. Louis, State of Missouri, made the following payments to the following persons:

Payee	Address	Total Payment
E. L. Archer	920 So. Main Hope, Arkansas	$ 2,575.05
F. R. Arthurhultz (also known as Arthur Holtz, and A. Holtz)	703 Main Street Buchanan, Michigan	886.40
Berridge & Rumer, a co-partnership doing business as No. 8 Recreation Club consisting of Harry R. Berridge and Frank J. Rumer	101 North Second Vincennes, Indiana	7,416.60
Walter Bohnisch (also known as Walter Bonisch)	216 No. Oxford Street Lindsay, California	1,341.50
Ben Snathoff, and who is a partner in the partnership known as Castle Cigar Store	New Castle, Indiana	3,332.00

Payee	Address	Total Payment
R. J. Collins	4712 Westminster St. Louis, Missouri	900.00
Downey-Walsh (also known as D. & W. Cigar Store, a partnership consisting of James Downey and Thomas Walsh)	617 Columbus Street Ottawa, Illinois	3,852.50
R. A. Duff	Hotel Floridan Tallahassee, Florida	1,355.85
J. L. Ferguson	c/o Matts News Stand 331 Fourth AvenueNorth Nashville, Tennessee	8,217.75
E. R. Frieje (also known as E. R. Freije, doing business as Paramount Club)	Post Office Box 127 Terre Haute, Indiana	55,598.25
John Froschheuser (also known as John Froschhesuer, John Froschueser, John Frosheuseur, John Fraushheauser, and John Froeschheuser)	511 So. Burlington Hastings, Nebraska	1,415.75
Thomas Georgeff (also known as Tom Georgeff)	205 So. Ludlaw Dayton, Ohio	1,195.25
E. E. Green	159 Lindero Avenue Lindsay, California	632.00
Wilson C. Haight, Sr. (also known as Bill Haight)	Route 2 Ann Arbor, Michigan	2,413.20
William Hecht (also known as Wm. Hecht)	Calhoun Beach Hotel Minneapolis, Minnesota	11,248.60
R. J. Herrmann	3241 Trinity Road Louisville, Kentucky	3,724.60
Roy C. Hultburg (also known as Roy Hultburg)	282 Fifteenth Street, N. W. Cedar Rapids, Iowa	823.55
Philip L. Joseph (also known as Phil Joseph)	2706 Wooldridge Drive Austin, Texas	29,121.75
J. Raymond Levi (also known as J. R. Levi)	Post Office Box 244 Berryville, Virginia	15,045.55
Ralph Lowe	Midland, Texas	147,605.00
Clarence Marks (also known as C. Marks, doing business as Monroe Commission Co.)	Post Office Box 1303 Monroe, Louisiana	14,524.55
H. M. Pender	1625 Commerce Little Rock, Arkansas	12,400.00
Oscar Pfeiffer (doing business as R. L. Kilpatrick)	1430 Claytonia Terrace Richmond Heights, Mo.	16,379.25
Laverdo Ladgie Proctor (also known as Ray Proctor)	1435 Seventh Avenue Sacramento, California	700.00
Charles J. Rich (also known as Chas. Rich and C. J. Rich)	8201 Balsom Avenue University City, Mo.	166,115.00
Maurice A. Ryan (also known as Maury A. Ryan, and M. A. Ryan)	35 Klainecrest Fort Thomas, Kentucky	36,330.00
Harry Scott	Maryville, Missouri	656.10
Charles C. Spink	2018 Washington Avenue St. Louis, Missouri	2,982.80
R. W. Stoneking, doing business as Korn Club	Bushnell, Illinois	31,936.00

	Payee	Address	Total Payment
60	John E. Finnell (also known as Dred Finnell, and who was a partner in the partnership known as Walnut Recreation)	1521 East 48th Terrace Kansas City, Missouri	69,142.50
	E. J. White	116 Market Street Hattiesburg, Mississippi	949.80
	Roy Whitledge	Frankfort, Kentucky	5,977.20
	Bettie Woodall (also known as Betty Woodall)	1206 So. College Street Stuttgart, Arkansas	1,966.40
	Herbert M. Woolf	5049 Wornall Road Kansas City, Missouri	23,907.95
	Edward K. Yamato also known as Eddie Yamato, and E. Yamato)	2918 Lafayette Street Denver, Colorado	3,215.50
	Sam Ziegman	c/o Baseball Headquarters Omaha, Nebraska	72,650.00

and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1950, to make a return on United States Treasury Department Internal Revenue Service Form 1096, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the number of returns on Form 1099 attached thereto; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return, Form 1096, to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

COUNT 3

That during the calendar year 1950, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made the following payments to the following persons:

	Payee	Address	Total Payment
	Frank Ackerman	c/o Smoke House Post Office Box 1019 Galesburg, Illinois	$12,424.50
	Berridge & Rumer, a co-partnership doing business as No. 8 Recreation Club consisting of Harry R. Berridge and Frank J. Rumer	101 North Second Vincennes, Indiana	5,782.60
61	Ben Saathoff, who is a partner in the partnership known as Castle Cigar Store	New Castle, Indiana	3,140.00
	Downey-Walsh (also known as D. & W. Cigar Store, a partnership consisting of James Downey and Thomas Walsh)	617 Columbus Street Ottawa, Illinois	13,525.85

Payee	Address	Total Payment
J. L. Ferguson	c/o Matts News Stand 331 Fourth Avenue North Nashville, Tennessee	17,955.00
Thomas Georgeff (also known as Tom Georgeff)	205 So. Ludlaw Dayton, Ohio	22,783.00
E. W. Henderson	Post Office Box 361 Charlotte, North Carolina	1,790.00
Philip L. Joseph also known as Phil Joseph)	2706 Wooldridge Drive Austin, Texas	7,563.40
J. Raymond Levi (also known as J. R. Levi)	Post Office Box 244 Berryville, Virginia	9,602.15
Dr. Richard A. Lewis (also known as Dr. R. A. Lewis)	East Rainelle West Virginia	13,920.45
Ralph Lowe	Post Office Box 832 Midland, Texas	9,450.00
Clarence Marks (also known as C. Marks, doing business as Monroe Commission Co.)	Post Office Box 1303 Monroe, Louisiana	28,709.70
Oscar Pfeiffer, doing business as R. L. Kilpatrick & Co.	1430 Claytonia Terrace Richmond Heights, Mo.	6,320.00
Laverdo Ladgie Proctor (also known as Ray Proctor)	1435 Seventh Avenue Sacramento, California	1,800.00
Charles J. Rich (also known as Chas. Rich and C. J. Rich)	8201 Balsom Avenue University City, Mo.	217,375.00
Maurice A. Ryan (also known as Maury A. Ryan and M. A. Ryan)	35 Klainecrest Fort Thomas, Kentucky	4,270.00
John E. Finnell (also known as Dred Finnell, and who was a partner in the partnership known as Walnut Recreation)	1521 East 48th St. Terrace Kansas City, Missouri	11,350.00
Ray Whitledge	Frankfort, Kentucky	1,958.30
Herbert M. Woolf	5049 Wornall Road Kansas City, Missouri	12,060.65
Sam Ziegman	c/o Baseball Headquarters Omaha, Nebraska	44,785.00

and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1,
62 as amended, the said James J. Carroll was required on or before February 15, 1951, to make a return on United States Treasury Department Internal Revenue Service Form 1096, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the number of returns on Form 1099 attached thereto; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return, Form 1096, to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U.S.C., Section 145(a).

A True Bill.
EDYTHE L. SHELBY
Foreman

SAM M. WEAR
Sam M. Wear
United States Attorney

HARRY F. MURPHY
Harry F. Murphy
Assistant United States Attorney

FREDERICK M. SELTZER
Frederick M. Seltzer
Special Assistant to the United States Attorney

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63 IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 18188

Defendant's Motion to Dismiss—Filed Jan. 31, 1952

Comes now the defendant in the above-entitled cause and moves that each Count of the Indictment filed herein be dismissed upon the following grounds:

1. That Counts One through Forty-Five of the Indictment are barred by the Statute of Limitations.

2. That this Court is without jurisdiction over the subject matter alleged in the Indictment and over the person of this defendant.

3. That the Indictment is defective and this Court has no jurisdiction thereof for the reason that the Grand Jury was not given any charge or instructions by the Court relative to matters of law during their investigation.

4. That the acts alleged to have been committed by the defendant do not constitute an offense against the laws of the United States, for the reason that since 1937, contrary to previous practice, no reference has been made under the Regulations on the Income Tax Return known as Form 1040 to the information required on Internal Revenue Service Forms 1099 and 1096, thus indicating that such information is no longer required or requested by the Com-

64 missioner of Internal Revenue of the Secretary of the Treasury, and that any requirement previously existing has been abandoned by the Government.

5. That the Indictment is further defective for the reason that it is not stated therein that the information allegedly required to be supplied on Internal Revenue Service Form 1099 was or is in the possession, custody or control of this defendant.

6. That the silence of the Internal Revenue Agents with respect to the requirement of filing Internal Revenue Service Forms 1099 and 1096 after their examination of a taxpayer's books and records establishes reasonable cause for an alleged failure to file such forms.

7. That the Indictment does not state facts sufficient to constitute an offense against the United States.

8. That the alleged offenses charged in the Indictment are the same offenses with which the defendant is charged in a separate Indictment under Cause No. 18189 pending in this Court, and that if the defendant is prosecuted under each Indictment he could be twice convicted for the same alleged offense.

9. That the Indictment does not state facts sufficient to constitute an offense for the reason that it does not charge all of the essential elements of the particular offense.

10. That the Indictment is defective for the reason that it does not set out or allege that any demand was at any time made of the defendant for the furnishing of the information referred to, as required by Section 147 of the Internal Revenue Code.

11. That the Indictment is defective for the reason that the failure to file on Internal Revenue Service Form 1099 does not constitute an offense under section 145 of the Internal Revenue Code.

12. That each Count of the Indictment charges the defend-
65 ant with the commission of the same offense in such manner that the defendant could be convicted 101 times for the same alleged offense under this Indictment.

13. That Counts One (1) through Forty-Five (45) of the Indictment, charging the defendant with the failure to make a return on or before February 15, 1949, charge the defendant with the same offense, in such manner that he could be convicted 45 times for the commission of the same alleged offense.

14. That Counts Forty-Six (46) through Eighty-One (81) of the Indictment, charging the defendant with the failure to make a return on or bfeore February 15, 1950, charge the defendant with

the same offense, in such manner that he could be convicted 36 times for the commission of the same alleged offense.

15. That Counts Eighty-Two (82) through One Hundred and One (101) of the Indictment, charging the defendant with the failure to make a return on or before February 15, 1951, charge the defendant with the same offense, in such manner that he could be convicted 20 times for the commission of the same alleged offense.

16. That for a long period of time the plaintiff has received and accepted without objection the returns filed by this defendant, and has thus by its actions ratified, accepted and consented to the information so furnished by the defendant, and is therefore barred and estopped from the prosecution of the alleged offense.

17. That if the commission of the acts set out in the Indictment constitute an offense against the laws of the United States, yet by reason of the acts, customs, practices and procedure of the Bureau of Internal Revenue and the Department of Justice relative thereto, a taxpayer has as a matter of law reasonable cause to fail to furnish the information allegedly omitted by the defendant.

66 18. That the plaintiff, in seeking to prosecute this defendant upon the acts alleged in the Indictment, contrary to the practices and procedure of the Bureau of Internal Revenue and the Department of Justice, is acting in a discriminatory fashion and is depriving this defendant of the equal protection of the law and of due process of law, contrary to the provisions of the Constitution of the United States.

19. That the statute upon which the Indictment is based in this cause is so vague, indefinite and uncertain that the application of such statute to the acts alleged to have been committed herein will cause said statute to become an instrument of great hardship and confusion.

20. That the Indictment in this cause is defective for the reason that it was filed without affording to the defendant a hearing before the Internal Revenue Department, contrary to the practices, procedure and regulations of the said Department.

21. That the Indictment in this cause does not state facts with sufficient certainty to advise the defendant of the nature of the charges sought to be proved thereunder, nor to enable him to prepare his defense thereto, nor to plead the judgment of the Court herein in bar of a further prosecution for the same alleged acts.

22. That the acts set forth in the Indictment do not constitute an offense against the laws of the United States for the further reason that the Indictment does not state that the payments allegedly made by the defendant were payments of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, or income.

23. That by reason of the uncertainty and confusion among the general public as to the necessity of filing the returns under
67 Section 147 of the Internal Revenue Code, and as well among the officials of the Government charged with the enforcement of the income tax statutes, as illustrated by the lack of prosecution thereon, contrary to the provisions of Sections 3745 and 4047(9) of Title 26 of the United States Code, it is apparent that as a matter of law no offense was committed under the allegations set forth in the Indictment.

24. That the Court is without jurisdiction for the reason that the defendant was not afforded an opportunity to present any facts or evidence before the Penal Division of the Bureau of Internal Revenue or the Department of Justice prior to the institution of this prosecution as required by the practice and procedure of those departments and was thereby deprived of the equal protection of the law.

25. That the Grand Jury was without jurisdiction to indict the defendant because the defendant was not afforded an opportunity to present any facts or evidence before the Penal Division of the Bureau of Internal Revenue or the Department of Justice prior to the institution of this prosecution as required by the practice and procedure of those departments.

26. That the Grand Jury had insufficient evidence to indict the defendant because it heard no evidence of any hearing afforded this defendant before the Penal Division of the Bureau of Internal Revenue or the Department of Justice prior to the institution of this prosecution.

27. That the Grand Jury was without jurisdiction to indict the defendant for the reason that it had received no authorization or sanction from the Commissioner of Internal Revenue nor any direction from the Attorney General of the United States that the action be commenced, as required by Section 3740 of Title 26 of the United States Code.

68 28. That the statutes upon which the Indictment is based are unconstitutional because they deny the defendant due process of law and deprive him of rights as guaranteed by the

Fifth Amendment of the Constitution of the United States for the reason that Section 3761 of the Internal Revenue Code authorizes the Commissioner of Internal Revenue and the Attorney General to compromise any civil or criminal case arising under the Internal Revenue laws, and section 3740 of the Internal Revenue Code forbids the commencement of any criminal case arising under the Internal Revenue laws without the approval of the Commissioner of Internal Revenue and the Attorney General.

29. That the statutes upon which the Indictment in this cause is based are unconstitutional for the reason that they deny the defendant due process of law and equal protection of the law and deprive him of rights guaranteed by the Fifth Amendment of the Constitution of the United States, for the reason that Section 3761 of the Internal Revenue Code authorizes the Commissioner of Internal Revenue and the Attorney General to compromise any civil or criminal case arising under the Internal Revenue laws, without fixing any standard for such a compromise; and Section 3740 of the Internal Revenue Code forbids the commencement of any criminal case arising under the Internal Revenue laws without the approval of the Commissioner of Internal Revenue and the Attorney General, and also fails to fix a standard by which the Commissioner and the Attorney General shall determine when to authorize or sanction a criminal proceeding; and for the further reason that said statutes unlawfully delegate to a non-judicial body the power to determine which persons shall be criminally prosecuted and which persons shall not be criminally prosecuted.

69 30. That the Grand Jury in this cause had no competent evidence before it upon which it could base an Indictment.

31. That the evidence upon which this Indictment was obtained was obtained by Government agents under the compulsion of the statute which requires a taxpayer to produce his records for inspection by Government revenue agents and under the compulsion of the decision in *Myres* vs. *United States*, 8 Cir., 174 F. (2d) 329, which holds that the failure or refusal of a taxpayer to produce his books and records is a circumstance which might be considered in determining the issue of wilfulness in prosecutions under Section 145 of the Internal Revenue Code, and the use of such evidence violates defendant's rights under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

32. That the institution of the Indictment under Cause No. 18189 constitutes an abandonment or an amendment of the allegations set out in the Indictment herein.

33. That the failure to file Internal Revenue Service Form 1099 does not constitute an offense against the laws of the United States because no statute specifically makes such an omission a crime.

34. That the interpretation of Sections 145(a) and 147 of the Internal Revenue Code by the Bureau of Internal Revenue and the Department of Justice, and the subsequent reenactment in the Internal Revenue Code of those sections by the Congress of the United States indicates that the failure to file Internal Revenue Service Form 1099 does not constitute an offense against the laws of the United States.

35. That the Indictment does not charge an offense for the reason that Internal Revenue Service Form 1099 does not constitute
70 a return with in the meaning of section 145(a) of the Internal Revenue Code.

36. That the Indictment does not charge an offense for the reason that it does not charge or allege that any tax was due or owing to the United States as a result of the acts alleged to have been committed by this defendant.

M.A. SHENKER
MORRIS A. SHENKER
408 Olive Street
St. Louis Missouri
Attorney for Defendant

Defendant request oral argument and leave to present evidence in support of this motion.

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71 IN UNITED STATES DISTRICT COURT

No. 18189

[Title Omitted]

Defendant's Motion to Dismiss—Filed Jan. 31, 1952

Comes now the defendant in the above-entitled cause and moves that each Count of the Indictment filed herein be dismissed upon the following grounds:

1. That Count One of the Indictment is barred by the Statute of Limitations.

2. That this Court is without jurisdiction over the subject matter alleged in the Indictment and over the person of this defendant.

3. That each Count of the indictment charges the defendant with the commission of the same offense in such manner that the defendant could be convicted 3 times for the same alleged offense under this Indictment.

4. That the silence of the Internal Revenue Agents with respect to the requirement of filing Internal Revenue Service Forms 1099 and 1096 after their examination of a taxpayer's books and records establishes reasonable cause for an alleged failure to file such forms.

5. That the acts alleged to have been committed by the defendant do not constitute an offense against the laws of the United
72 States, for the reason that since 1937, contrary to previous practice, no reference has been made under the regulations on the Income Tax Return known as Form 1040 to the information required on Internal Revenue Service Forms 1099 or 1096, thus indicating that such information is no longer required or requested by the Commissioner of Internal Revenue of the Secretary of the Treasury, and that any requirement previously existing has been abandoned by the Government.

6. That the Indictment is defective for the reason that it is not stated therein that the information allegedly required to be supplied on Internal Revenue Service Form 1096 was or is in the possession, custody or control of this defendant.

7. That the Indictment does not state facts sufficient to constitute an offense against the United States.

8. That the alleged offenses charged in the Indictment are the same offenses with which the defendant is charged in a separate Indictment under Cause No. 18188 pending in this Court, and that if the defendant is prosecuted under each Indictment he could be twice convicted for the same alleged offense.

9. That the Indictment does not state facts sufficient to constitute an offense for the reason that it does not charge all of the essential elements of the particular offense.

10. That the Indictment is defective for the reason that it does not set out or allege that any demand was at any time made of the defendant for the furnishing of the information referred to, as required by Section 147 of the Internal Revenue Code.

11. That the Indictment is defective for the reason that the failure to file on Internal Revenue Service Form 1096 does not constitute an offense under section 145 of the Internal Revenue Code.

12. That for a long period of time the plaintiff has received and accepted without objection the returns filed by this
73 defendant, and has thus by its actions ratified, accepted and consented to the information so furnished by the defendant, and is therefore barred and estopped from the prosecution of the alleged offense.

13. That if the commission of the acts set out in the Indictment constitute an offense against the laws of the United States, yet by reason of the acts, customs, practices and procedure of the Bureau of Internal Revenue and the Department of Justice relative thereto, a taxpayer has as a matter of law reasonable cause to fail to furnish the information allegedly omitted by the defendant.

14. That the plaintiff, in seeking to prosecute this defendant upon the acts alleged in the Indictment, contrary to the practices and procedure of the Bureau of Internal Revenue and the Department of Justice, is acting in a discriminatory fashion and is depriving this defendant of the equal protection of the law and of due process of law, contrary to the provisions of the Constitution of the United States.

15. That the statute upon which the Indictment is based in this cause is so vague, indefinite and uncertain that the application of such statute to the acts alleged to have been committed herein will cause said statute to become an instrument of great hardship and confusion.

16. That the Indictment in this cause is defective for the reason that it was filed without affording to the defendant a hearing before the Internal Revenue Department, contrary to the practices, procedure and regulations of the said Department.

17. That the Indictment in this cause does not state facts with sufficient certainty to advise the defendant of the nature of the charges sought to be proved thereunder, nor to enable him to prepare his defense thereto, nor to plead the judgment of
74 the Court herein in bar of a further prosecution for the same alleged acts.

18. That the acts set forth in the Indictment do not constitute an offense against the laws of the United States for the further reason that the Indictment does not state that the payments allegedly made by the defendant were payments of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, or income.

19. That by reason of the uncertainty and confusion among the general public as to the necessity of filing the returns under Sec-

tion 147 of the Internal Revenue Code, and as well among the officials of the Government charged with the enforcement of the income tax statutes, as illustrated by the lack of prosecution thereon, contrary to the provisions of Sections 3745 and 4047(9) of Title 26 of the United States Code, it is apparent that as a matter of law no offense was committed under the allegations set forth in the Indictment.

20. That the Court is without jurisdiction for the reason that the defendant was not afforded an opportunity to present any facts or evidence before the Penal Division of the Bureau of Internal Revenue or the Department of Justice prior to the institution of this prosecution as required by the practice and procedure of those departments and was thereby deprived of the equal protection of the law.

21. That the Grand Jury was without jurisdiction to indict the defendant because the defendant was not afforded an opportunity to present any facts or evidence before the Penal Division of the Bureau of Internal Revenue or the Department of Justice prior to the institution of this prosecution as required by the practice and procedure of those departments.

75 22. That the Grand Jury had insufficient evidence to indict the defendant because it heard no evidence of any hearing afforded this defendant before the Penal Division of the Bureau of Internal Revenue or the Department of Justice prior to the institution of this prosecution.

23. That the Grand Jury was without jurisdiction to indict the defendant for the reason that it had received no authorization or sanction from the Commissioner of Internal Revenue nor any direction from the Attorney General of the United States that the action be commenced, as required by Section 3740 of Title 26 of the United States Code.

24. That the statutes upon which the Indictment is based are unconstitutional because they deny the defendant due process of law and deprive him of rights as guaranteed by the Fifth Amendment of the Constitution of the United States for the reason that Section 3761 of the Internal Revenue Code authorizes the Commissioner of Internal Revenue and the Attorney General to compromise any civil or criminal case arising under the Internal Revenue laws, and section 3740 of the Internal Revenue Code forbids the commencement of any criminal case arising under the Internal Revenue laws without the approval of the Commissioner of Internal Revenue and the Attorney General.

25. That the statutes upon which the Indictment in this cause is based are unconstitutional for the reason that they deny the defendant due process of law and the equal protection of the law and deprive him of rights guaranteed by the Fifth Amendment of the Constitution of the United States, for the reason that Section 3761 of the Internal Revenue Code authorizes the Commissioner of Internal Revenue and the Attorney General to compromise any civil or criminal case arising under the Internal Revenue laws, without fixing any standard for such a compromise; and Section 3740 of the Internal Revenue Code forbids
76. the commencement of any criminal case arising under the Internal Revenue laws without the approval of the Commissioner of Internal Revenue and the Attorney General, and also fails to fix a standard by which the Commissioner and the Attorney General shall determine when to authorize or sanction a criminal proceeding; and for the further reason that said statutes unlawfully delegate to a non-judicial body the power to determine which persons shall be criminally prosecuted and which persons shall not be criminally prosecuted.

26. That the Grand Jury in this cause had no competent evidence before it upon which it could base an Indictment.

27. That the evidence upon which this Indictment was obtained was obtained by Government agents under the compulsion of the statute which requires a taxpayer to produce his records for inspection by Government revenue agents and under the compulsion of the decision in Myres vs. United States, 8 Cir., 174 F. (2d) 329, which holds that the failure or refusal of a taxpayer to produce his books and records is a circumstance which might be considered in determining the issue of wilfulness in prosecutions under Section 145 of the Internal Revenue Code, and the use of such evidence violates defendant's rights under the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States.

28. That the failure to file Internal Revenue Service Form 1096 does not constitute an offense against the laws of the United States because no statute specifically makes such an omission a crime.

29. That the interpretation of Sections 145(a) and 147 of the Internal Revenue Code by the Bureau of Internal Revenue and the Department of Justice, and the subsequent reenactment in the Internal Revenue Code of those sections by the Congress of the United States indicates that the failure to file Internal
77 Revenue Service Form 1096 does not constitute an offense against the laws of the United States.

30. That the Indictment does not charge an offense for the reason that Internal Revenue Service Form 1096 does not constitute a return within the meaning of section 145(a) of the Internal Revenue Code.

31. That the Indictment does not charge an offense for the reason that it does not charge or allege that any tax was due or owing to the United States as a result of the acts alleged to have been committed by this defendant.

32. That the Indictment is further defective and this Court has no jurisdiction thereof for the reason that the Grand Jury was not given any charge or instructions by the Court relative to matters of law during their investigation.

M. A. SHENKER
Morris A. Shenker
408 Olive Street
St. Louis, Missouri
Attorney for Defendant

Defendant requests oral argument and leave to present evidence in support of this motion.

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78 IN UNITED STATES DISTRICT COURT

No. 18,188

[Title Omitted]

Defendant's Supplemental Motion to Dismiss—Filed Aug. 11, 1952

The defendant moves the Court to dismiss each Count of the Indictment herein for the following grounds in addition to the grounds set forth in Defendant's Motion to Dismiss:

1. The Grand Jury had no jurisdiction to return an indictment after the expiration of the original term of Court in which they began their hearings in the absence of a statute conferring jurisdiction for the reason that Rule 6(g) of the Federal Rules of Criminal Procedure can neither grant, restrict nor enlarge the jurisdiction of the Grand Jury.

2. That this Court has no jurisdiction over Counts One through Forty-Five of the Indictment for the reason that prior to February 16, 1949, Regulation 111, Section 29.147-1, provided that "returns of information should be filed with the Commissioner of Internal Revenue, Processing Division, 260 E. 161st. St., New York 51, New York."

3. The Indictment is predicated on the failure to file United States Treasury Department Form 1099, the doing of which act or acts under compulsion would constitute a violation of the rights guaranteed by the Constitution of the United States that no person shall be compelled to give or furnish testimony which may tend to incriminate him.

MORRIS A. SHENKER
Morris A. Shenker
408 Olive Street
St. Louis, Missouri
Attorney for Defendant

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79 IN UNITED STATES DISTRICT COURT

No. 18189

[Title Omitted]

Defendant's Supplemental Motion to Dismiss—Filed Aug. 11, 1952

The defendant moves the Court to dismiss each Count of the Indictment herein for the following grounds in addition to the grounds set forth in Defendant's Motion to Dismiss:

1. The Grand Jury had no jurisdiction to return an Indictment after the expiration of the original term of Court in which they began their hearings in the absence of a statute conferring jurisdiction for the reason that Rule 6(g) of the Federal Rules of Criminal Procedure can neither grant, restrict nor enlarge the jurisdiction of the Grand Jury.

2. That this Court has no jurisdiction over Count One of the Indictment for the reason that prior to February 16, 1949, Regulation 111, Section 29.147-1, provided that "returns of information should be filed with the Commissioner of Internal Revenue, Processing Division, 260 E. 161st St., New York 51, New York."

3. The Indictment is predicated on the failure to file United States Treasury Department Form 1096, the doing of which act or acts under compulsion would constitute a violation of the rights guaranteed by the Constitution of the United States that no person shall be compelled to give or furnish testimony which may tend to incriminate him.

M. A. SHENKER
Morris A. Shenker
408 Olive Street
St. Louis, Missouri
Attorney for Defendant

80 IN UNITED STATES DISTRICT COURT

Record Entry Motion to Dismiss in Case No. 18188 Submitted and Sustained, August 11, 1952

On this 11th day of August, 1952, come the parties herein, the defendant in person and by counsel Morris A. Shenker and the United States by F. M. Seltzer and Harry F. Murphy. Defendant files a supplemental Motion to Dismiss and thereafter the Motion to Dismiss is taken up, argued by counsel, submitted to the Court and by the Court sustained. It is by the Court ordered that the defendant be discharged and that his bond be exonerated.

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81 IN UNITED STATES DISTRICT COURT

Record Entry Motion to Dismiss in Case No. 18189 Submitted and Sustained as to Count I, Overruled as to Counts 2 and 3; Motion for Bill of Particularr Overruled; Plea Not Guilty Entered, August 11, 1952

On this 11th day of August, 1952, come the parties herein, the defendant in person and by counsel Morris A. Shenker and the United States by F. M. Seltzer and Harry F. Murphy. The defendant files a Supplemental Motion to Dismiss and thereafter the defendant's Motion to Dismiss is taken up, argued by counsel and submitted to the Court. The Court sustains the Motion as to Count I of the Indictment herein and overrules the said Motion as to Counts 2 and 3. Defendant's Motion for Bill of Particulars overruled. Defendant is arraigned and entered a plea of not guilty as to Counts 2 and 3; Trial set for the 17th day of November, 1952.

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82 IN UNITED STATES DISTRICT COURT

Criminal No. 18188

[Title Omitted]

Notice of Appeal—Filed Sept. 8, 1952

The United States hereby appeals to the Supreme Court of the United States from the order of the United States District Court for the Western District of Missouri, Western Division, entered August 11, 1952, dismissing the indictment against the defendant, which charge him with violations of Section 145(a) of the Internal Revenue Code, which imposes criminal penalties against anyone who wilfully fails to make a return required by Section 147(a) of the Internal Revenue Code, for use in the computation, assess-

ment and collection imposed by Chapter 1 of the Internal Revenue Code relating to taxes on income of individuals.

ROBERT L. STERN
Robert L. Stern,
Acting Solicitor General.

SEPTEMBER 1952

Copy of the above mailed to Morris Shenker, 408 Olive, St. Louis, Missouri this 8th day of September, 1952.

A. L. ARNOLD, *Clerk*
By W. W. CASTER, *Deputy Clerk*

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88 IN UNITED STATES DISTRICT COURT

No. 18188

[Title Omitted]

Transcript of the Court's Remarks in Passing Upon Defendant's Motion to Dismiss Before Honorable Richard M. Duncan, District Judge August 11, 1952

THE COURT:

"With a possible exception of one or two matters ruled on here, the Court has given this matter a great deal of thought. It has been here a long time and I have walked around with this thing on my mind a lot because it presented some unusual questions.

"It arose in a rather unusual manner in its inception. That is none of the Court's business at this time, however, but there are some questions of law that I have constantly had in mind in connection with certain other cases that I have had.

"In the first place, gentlemen, I am going to disagree with both of you rather sharply. I think usually when the Court disagrees sharply with both sides, the Court is likely to be right. So that is going to be the Court's position here.

"As I stated this morning, I do not believe that it was the intention of Congress that the failure to report each item required by the statute rates a separate and distinct crime. The statute says that a person paying an amount in excess of $600 for certain things should be reported on or by the 15th of February of each year. I think that it was the intention of the statute that a
89 return should be made containing that information. I think that Form 1096 is the form that is anticipated required by the statute and that the information which has been described here as being required in Form 1099 as a part of 1096. I don't

think they are separate and distinct. I think that it is one. I think that 1096 is the one that the law requires and that the information contained in 1099 must be made a part of 1096. I think if that information is not contained in 1096, that the person who is required to file the form might be indicted for making a false return and not for a separate and distinct offense. Now those are two things.

"I think that the failure to file each item, that is as in this case it is alleged—or whether it is alleged or not, it is common knowledge—that it is the charge that the money paid here went to persons who had won in games of chance and there were a great many of them, and it is the Court's thought that each one of those does not constitute a separate offense, but that all of them should have been included in Form 1096. If they were not, then after the form was filed, it would have been an offense for making a false return and then, pursuing that just a bit further, the government has the authority under the statute to resort, may we say, to the Rules of Discovery, to get that information, to come into a court of equity and require that it be done, but I will get into that a bit later.

"For that reason, I think as I stated this morning, I was thoroughly convinced that the first indictment, 18,188, would as to all counts except one for each year, have to be dismissed.

"In view of what has transpired here, I must go further and hold that the indictment itself must be dismissed because, in the opinion of the Court, it is not a violation of the law to fail to file under Form 1099, but it is a violation to fail to file 1096.

"So it will be the ruling of the Court that the *Motion to Dismiss as to 18,188 will be sustained.*"

90 "We next come to 18,189. Now, gentlemen, I may be wrong. I am often wrong. The Court of Appeals has repeatedly said so, but I am still trying.

"The question of venue under our modern practice and theory of government is becoming a most serious one and I think all who think economically as well as legally in this complicated age must realize that we are living in a new and complicated age.

"The income tax laws are probably among the most complicated that are upon the statute books. You will pardon any personal reference. It is not anything new, but I either had the privilege or the misfortune, whichever it may have been, to have served for eight years on the Ways and Means Committee in the Congress and on the subcommittee writing tax bills, and the head of the drafting service I think probably knew more federal law and federal statutes than any other man in the United States. I remember one day after spending days and days with all the experts from the Treasury Department and the Internal Revenue Depart-

ment and our own staff, the Joint Committee worked out some theory that should go into the law. It came back in language which none of us could understand. We asked him about it and he smiled one of his rare smiles and said, 'Well, you know we live in the most complicated government in the world and when you try to put within 150 or 200 pages all of the conditions necessary to the collection of taxes in this country, you are going to have to use some complicated language or you won't collect the taxes. The fellows on the outside are working harder to keep from paying them, not criminally, but just protecting themselves, than they are on the inside trying to collect them.' And that was not a reflection on anybody. Of course, it is necessary to make rules and regulations.

"Following that statement through, if you didn't confer upon the Internal Revenue Department and the Treasury Department the rule making authority to make rules and regulations with respect to the collection of taxes, that tax bill would have to have probably 1000 pages instead of 150 or 200. So naturally, authority has been conferred to make reasonable rules and regulations within the four corners of the law itself, and when they go beyond that, then they are not reasonable rules and regulations, and I think the Court has a perfect right to disregard them. It would be illegal if they were not within the four corners of the law itself, and I am not saying that the ones here are not. I think they are.

"But the question of venue comes again not only in the collection of revenue, but in the enforcement of many other of our modern laws to meet modern conditions. They have set up zones, districts within which the law is to be administered. My own personal view, as a lawyer and as a judge, that the venue laws ought not to be changed as a result of those rules and regulations. I don't think it is right legally. I disagree with my judicial brethren who are my superiors in these matters. I do not think it is right that a man from St. Louis should be brought to Kansas City to answer to the law. I do not think a man from Kansas City should be required to go to New York to defend against some violation of the law. I think it ought to be prosecuted in the
91 place where he lives as it is in almost every other instance. There are a few others where the violation has occurred in two or three different states, or it is a continuing one, such as the violation of the Postal Regulations, and some other matters, but we are getting to that sort of thing. We are bringing our citizens sometimes to some places hundreds of miles away, and under this law you would bring them for thousands of miles to Kansas City to prosecute them. I do not think it is right. I do not think it ought to be the law, but I do think that the courts have held that

it is the law and I think I am bound by it. But I think when the department through their regulations have said that it must be filed in a certain place, I do not think that sometime, a few years later, you can come in and say, 'We didn't mean that; we think it should be filed some place else.'

"Gentlemen, your regulations provided that the returns for 1947 and 1948 should be filed in New York City. You say you have moved the Processing Division out here. That is true and the Government says here that when they processed them then they sent them back to the Collection District.

"This Court is only bound by the law as it is written. This Court must take judicial notice of the rules and regulations of the Bureau of Internal Revenue, and every other bureau, when they are published in the Federal Register, and when that has been done, then that is the law and is binding upon every citizen of the United States. It is binding upon the Court and it is not binding until that is done. Actual notice is not sufficient.

"So I do not think that you have any right to say that a man who under the law was required to file his return in New York on February 15, 1948, can in 1951 be indicted for failure to make that same return in Kansas City. I just don't believe, gentlemen, that that is the law, that you can shift your venue by any will or whim or caprice, and I don't mean that disrespectfully of anyone. I don't believe you can do that and that is going to be the ruling of this Court and the Motion to Dismiss will be sustained as to that count, Count I, because in the opinion of the Court it was required to be filed in New York, and the order did not become a law until after the filing time had expired requiring it to be filed in Kansas City, although the processing district was here and had been here for quite some time.

"Now we get around to the other two counts. I cannot agree with Mr. Schenker that this is strictly a civil proceeding. I think the statute required that the form be filed. The purpose of it is obvious and always has been that we have, of course, a great many citizens who may not be in such economic condition as to require the filing of a return under normal conditions. It is difficult to check up on them. Therefore, this statute was passed but those who are paying money to other persons should report it so that the government may know who is receiving income. Of course, we realize that in certain cases it may be a little bit of a hardship, but it is nevertheless the law. I can think of many, many instances where it might be disastrous, both to the recipient and to the payer of the money, to have to account for it, but, nevertheless, it is the law and the government has a right to have that information, and if they are going to require that sort of thing, then they should do whatever is necessary to do about it. I think the statute

does require a return and I think there is a criminal penalty
92 for failure to comply with it, failure to make a return, and I think a 'return' means any return that is required by the statute, a declaration or whatever it is, and that failure to do so would subject the violator to the penalty.

"With that in mind, the *Motion to Dismiss will be overruled as to Counts II and III.*

"What comes next, gentlemen? Has there been a plea in this case?

"MR. SCHENKER: I was just wondering if the defendant had been arraigned.

"THE COURT: I don't think he has.

"MR. SCHENKER: I don't think so.

"THE COURT: We had better have the arraignment. I think there has been no plea in either this case or the other case.

"MR. SCHENKER: I am sure there wasn't any in the other one.

"THE COURT: I don't think there has been any in this case. I think you were here.

"MR. SCHENKER: That is right.

"THE COURT: And got leave to file these motions and they have been going along here for a long period of time, through the fault of no one.

"MR. SCHENKER: That is correct.

(Whereupon, discussion was had off the record.)

"THE COURT: If your client will come forward.

"MR. SELTZER: Could the record show that the Government excepts to the ruling?

"THE COURT: All exceptions are saved.

(Whereupon, discussion was had off the record.)

"THE COURT: What is the plea of the defendant?

"MR. SCHENKER: Not guilty, if the Court please.

"THE COURT: A plea of not guilty.

"Now, gentlemen, about a trial. You have some motions to make more definite and certain and I think, gentlemen, that the indictment complies with the law. We realize that under the New Rules of Criminal Procedure it does not require very much to make an indictment good. There may be some information that you are entitled to and, if the Court can simply express his
93 opinion about it I think the government is not required to give up its evidence as such, but such books and records and certain things that were taken from the defendant, certainly you have a right to them and to see them, and there may be some other things.

"MR. SCHENKER: I might say this in order to be perfectly fair with the Court, that our Motion for Discovery and Inspection was premature excepting I wanted to get all our motions in because

in order to really come within the terms of U. S. versus Bauman, we should strictly also have filed a subpoena duces tecum but we could not have done so without knowing what they would file.

"THE COURT: I think that you probably have as much information and know whatever they know about it, and if they have taken any books and records away from your client, you are certainly entitled to them.

"MR. SCHENKER: I don't believe that condition exists.

"THE COURT: Whatever they have done in the preparation, I think you are not entitled to see. I am rather liberal in my views about these matters and yet I do not think the defendant is entitled to search the soul and conscience of his opposition too deeply.

"Now, what about a trial of it, gentlemen?

"MR. SCHENKER: Before that question may I call to the Court's attention—I believe you indicated I was thinking in terms of a bill of particulars.

"THE COURT: If there is a Motion to Dismiss the indictment that I haven't passed on, it will be done.

"MR. SCHENKER: It was passed on. The only thing I was thinking about a bill of particulars is that there are certain matters which we can raise if the government were to file a bill of particulars which appears to me would undoubtedly go a long way towards expediting the question of a trial. I indicated to the Court before that when the criminal information was filed the government alleged that these payments were gains as a result of gambling activities substantially and I believe they also indicated something on the question of a demand. Well, the question of a demand is not pertinent now in view of the Court's ruling, but the question as to the source or the reason for those payments, and so forth, that is pertinent and material. For instance, it would certainly give the position of the government whether it is their contention that payments made as a result of gambling ventures were covered by 147. It would also give this question and have the government state whether it is a net proposition over the end of the year, the gains and losses with the final result or whether it is simply regardless of the losses by the person that made the wager.

"THE COURT: I can give you my thought about it very quickly. Would you say the demand is out of the situation so far as the defendant in this case is concerned? And may I assume
94 for the purpose of this discussion—it is not on the record—I assume that all these transactions were based upon gambling.

"MR. SCHENKER: That is a proper assumption.

"THE COURT: So I may assume that. The Court never likes to assume anything that may get anyone in trouble.

"MR. SELTZER: Payments were made in connection with gambling transactions.

"THE COURT: Now, I thought, gentlemen, that any sum paid to any individual as a result of a wager would under the statute have to be returned. Now, whether that is a gain or a loss, certainly it is a gain to the—shall we say the defendant in this case? If I take myself as an example, if I bet $1000.00 and as a result of that I get $600.00 back, not the $1000.00, but $600.00 in addition.

"MR. SELTZER: That is right, $1600.00.

"THE COURT: $1600.00 back. Then that $1600.00 is reported, must be reported so far as the other individual is concerned. It may be a gain or maybe it isn't. He has to account for that, but any amount he pays in excess of the amount that was deposited with him for the purpose of making a wager would have to be returned. That would be my legal conception.

"MR. SCHENKER: That would be correct; your conception would be correct regardless of the fact that perhaps the transaction involved one day where there was a payment of say $600.00 and the next day that same $600.00 came back.

"THE COURT: That is right.

"MR. SCHENKER: That would still be the Court's opinion.

"THE COURT: That is my opinion whenever he pays him $600.00 on a gambling obligation, the amount of $600.00.

"MR. SELTZER: More than $600.00 in the year.

"THE COURT: He has to account for it if he pays him more than $600.00, and, of course, he wouldn't pay him $600.00 in addition to the amount of the wager; if it would appear in evidence I came in here and bet $1000.00 and I got a check back for $1000.00. That was simply the amount that I wagered and for some reason I didn't win anything, but if I win more than $600.00, then it has to be reported.

"MR. SELTZER: Even though you lost the same amount of money to the same man the next day.

"THE COURT: That is right. In other words, if he has paid him that amount of money, that is a matter of adjusting. That is the very purpose of this thing. This statute was to keep track of it and I can see how it is pretty tough on a business of this kind.

95 "MR. SCHENKER: I don't want to belabor the situation but it would be most interesting if the government would attempt to enforce that law on dice games that a man pay or wager his money some forty times within a period of ten or fifteen minutes, and it would be most interesting to attempt to enforce it.

"THE COURT: It is like a transaction that multiplies itself so often. I have sat around the counsel table many, many days dis-

cussing with some of the folks who had a little more advanced ideas about imposing a tax on gambling, and after days of discussion, nobody has ever come up with any substantial or sound plan for taxing gambling so you get the money out of it that I have ever seen or heard of, except at the race track where it is out in the open. I think that is the law, gentlemen. That is the intention of the statute and that would be the ruling of the Court if I were to charge the jury. I would say to them that that was my opinion of the law that any amount of $600.00 and up would have to be reported. Whether he lost it the next day would be of no concern, he would have to account for that. That is, the individual to whom it is paid and not the one who is required to make the return.

"That is my thought and that will be my thought unless there is something to the contrary because I don't know of any law—

"MR. SCHENKER: We haven't been able to find any.

"THE COUURT: We are kind of pioneering this thing.

"MR. SCHENKER: We haven't been able to find any and I was just wondering whether we should not have attacked this law because it is just incapable of being enforced as to all things.

"THE COURT: I think there are a number of things like that, but it is not for this Court to say. We have had some others in the past that were unenforceable but they were on the books and they had to be looked after. I am not critical of the law. We are just making a practical situation. I think it is a perfectly good law and one that has resulted in the government's ability to collect taxes where they otherwise might not have obtained them.

"So that brings us back to where we are going and you may not be back here again for sometime. If we can agree on some time to set the case or if in the meantime we have to pass upon some formal matters, we can do that.

"MR. SCHENKER: Very well.

"THE COURT: But there is not very much here that I see where a bill of particulars will aid you.

"MR. SCHENKER: Frankly, that practically answered the point. While I am objecting and saving exceptions, it does enlighten me on the matter that I wanted to get at, and I am very appreciative to the Court for that.

"THE COURT: If I should change my mind about the situation, I think I should advise counsel on both sides.

96 "MR. SCHENKER: Those are the things that I wanted to raise and there was no way I could raise them as the indictment stood.

"THE COURT: All right.

(Whereupon, discussion was had off the record, at the conclusion of which the Court announced that said case would be set for trial on November 17, 1952.)

"THE COURT: Let the record show that the bill of particulars is overruled. That does not mean, gentlemen, that if some matter should develop in the meantime I am going to preclude you from filing another motion.

"MR. MURPHY: That still leaves the motion for discovery but I believe Mr. Schenker said that might be premature.

"MR. SCHENKER: I was going to make this suggestion, as to the motion for discovery, if the Court did not rule on it or would just pass it.

"THE COURT: I am willing to pass it now because if when you get into the preparation of it there is anything that you gentlemen cannot agree on, either that the government has and that you want, you can refer it to the Court and the Court can pass on it. I think that is the better way to handle it.

"MR. SELTZER: So there would not be any further argument on it?

"MR. SCHENKER: No.

"THE COURT: You gentlemen are not going to have any difficulties.

"MR. SCHENKER: I am perfectly willing to admit that my motion is premature at this time, my Motion for Discovery.

"THE COURT: Let the Motion for Discovery and Inspection remain on the docket, just make no order about it. Just leave it undisposed of by failure to mention it.

"Gentlemen, I want to congratulate both of you on the thoroughness with which you have briefed this matter and gone into a difficult situation. It is a new situation, as I see it.

"MR. SCHENKER: Thank you very much.

"THE COURT: You have both done a splendid job and represented your clients with fidelity.

"MR. SCHENKER: Thank you, your Honor.

"MR. SELTZER: Thank you, sir."

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97 **Service of Appeal Papers (Omitted in Printing)**

Service of Appeal Papers

(Omitted in Printing)

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98 **Designation of Contents of Record on Appeal**

(Omitted in Printing)

98A IN UNITED STATES DISTRICT COURT

Criminal No. 18188

[Title Omitted]

[File Endorsement Omitted]

Notice of Appeal—Filed Sept. 8, 1952

The United States hereby appeals to the Supreme Court of the United States from the order of the United States District Court for the Western District of Missouri, Western Division, entered August 11, 1952, dismissing the indictment against the defendant, which charge him with violations of Section 145(a) of the Internal Revenue Code, which imposes criminal penalties against anyone who wilfully fails to make a return required by Section 147(a) of the Internal Revenue Code, for use in the computation, assessment and collection imposed by Chapter 1 of the Internal Revenue Code relating to taxes on income of individuals.

ROBERT L. STERN
Robert L. Stern,
Acting Solicitor General.

SEPTEMBER 1952

Copy of the above mailed to Morris Shenker, 408 Olive, St. Louis, Missouri this 8th day of September, 1952.

A. L. ARNOLD,
Clerk

By W. W. CASTER,
Deputy Clerk

98B IN UNITED STATES DISTRICT COURT

No. 18188

[Title Omitted]

Docket Entries

Dec. 14 1951—Indictment filed.

" 17 " —Order for Warrant of Arrest, fixing appearance bond at $2500.00 to be taken by the nearest United States Commissioner filed. Warrant of Arrest issued & Mailed to the U.S. Marshal at St. Louis, Mo.

" 26 " —The defendant appears in open court by counsel, defendant not present in person. The defendant

is allowed until Feb. 1, 1952 within which to file pleadings to the indictment.

" 21 " —Warrant of arrest bearing the U.S. Marshal's return of arrest—The Marshall for the E. Dist. of Mo. filed. Appearance bond filed.

Jan. 30 1952—By order in open court, the United States is granted 30 days after the filing of defendant's pleadings in which to file a reply brief thereto.

Jan. 31 " —Defendant's motion to dismiss; Motion for discovery & inspection, and motion for a bill of particulars, filed in open court, without suggestions. Counsel for deft. advises the Court that suggestions will be mailed in.

Feb. 29 " —Order, extending time 30 days in which plaintiff may file suggestions in opposition to defendant's various motions, filed. (Attested copies of the order delivered to Mr. Selzer, counsel for plf.)

Mar. 26 " —Order giving plaintiff an additional 30 days in which to file suggestions in opposition to defendant's motions to dismiss, for discovery, and for bill of particulars, filed. (Copies delivered to counsel for plf. to be served on counsel for Deft.)

Apr. 28 " —Order giving plaintiff and additional 30 days in which to file suggestions in opposition to defendants motions to dismiss, for discovery and inspection, and for bill of particulars filed, and attested copies supplied counsel for the defendant.

May 26 " —Order giving plaintiff an additional 30 days to file suggestions in opposition to defendant's various motions filed. (Deft counsel supplied)

June 24 " —Order, extending time an additional 10 days in which plaintiff may file suggestions in opposition to defendant's motions to dismiss, for discovery and inspection, and for bill of particulars filed. (Copies to Mr. Selzer)

July 7 " —Government suggestions and supporting authorities in opposition to defendant's motion to dismiss, For discovery & Inspection, and for Bill of Particulars, filed. (Taken to Judge Duncan)

98C Aug. 11 1952—The parties appear, defendant in person & with counsel. A Supplemental Motion to Dismiss is filed by the defendant. Motion to dismiss is argued, submitted to the Court and by the Court sustained. Defendant is discharged & bond exonerated.

Sept. 8 " —Notice of Appeal, and Statement of Jurisdiction filed by the U.S. Atty. (Duplicate mailed to counsel for deft.).

Sept. 11 " —Statement of Jurisdiction, bearing acknowledgment of receipt of copy thereof by counsel for the defendant, filed.

Sept. 16 " —Designation of Contents of Record on Appeal filed.

Sept. 23 " —Statement of Defendant in Opposition to appellant's Statement of Jurisdiction filed.

Sept. 23 " —Counter Designation of contents of Record on Appeal filed by the defendant.

98D [Clerk's Certificate to foregoing paper omitted in printing.]

Counter Designation of Contents of Record on Appeal

99 [Omitted in Printing].

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100 [Clerk's Certificate to foregoing transcript omitted in printing.]

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101 IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

[Title Omitted]

[File Endorsement Omitted]

Statement of Points to be Relied Upon and Designation of Record—Filed December 23, 1952

Pursuant to Rule 13, paragraph 9, of this Court, appellant states that it intends to rely upon the following points:

1. The District Court erred in dismissing in its entirety indictment No. 18,188, containing counts 1 to 101, inclusive.

2. The District Court erred in holding that failure to file Treasury information returns Forms 1099, as required by Section 147 (a), Internal Revenue Code (26 U.S.C., 1946 ed., Sec. 147), did not constitute a separate offense under Section 145(a), Internal Revenue Code (26 U.S.C., 1946 ed., Sec. 145), as to each separate failure to file each Form 1099.

3. The District Court erred in holding that a maximum of one offense a year could be charged, under Section 145(a), Internal Revenue Code (26 U.S.C., 1946 ed., Sec. 145), for failure to file either Treasury information returns Forms 1096 or 1099, regardless of the number of Forms 1099 required to be filed together with Treasury information returns Forms 1096 for each year.

4. The District Court erred in holding that Treasury Forms 1099 were not separate and distinct but were merely attachments to or component parts of Treasury information returns Forms 1096.

102 5. The District Court erred in holding that Section 147 (a), Internal Revenue Code (26 U.S.C., 1946 ed., Sec. 147), and Treasury Regulations 111, Section 29.147-1, required only the filing of Treasury information returns Forms 1096 and did not require the filing of Forms 1099.

Appellant deems the entire record, as filed in the above-entitled case, necessary for consideration of the points relied on.

WALTER J. CUMMINGS, JR.,
Solicitor General.

December 20, 1952

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104 SUPREME COURT OF THE UNITED STATES

[Title Omitted]

Order Postponing Jurisdiction—Filed December 15, 1952

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court in this case is postponed to the hearing of the case on the merits.

December 15, 1952.

U.S. GOVERNMENT PRINTING OFFICE 1953—236037/P.O. 900

No. 442

In the Supreme Court of the United States

OCTOBER TERM, 1952

UNITED STATES OF AMERICA, *Appellant*,

v.

JAMES J. CARROLL

On Appeal from the United States District Court for the Western District of Missouri

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STATEMENT AS TO JURISDICTION

83

IN THE

United States District Court

FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Criminal No. 18188

UNITED STATES OF AMERICA

v.

JAMES J. CARROLL

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, and Rule 37(a) of the Federal Rules of Criminal Procedure, the United States submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the order of the District Court in this cause dismissing the indictment.

OPINION BELOW

The oral opinion of District Court which states the grounds for dismissing the indictment has not

been reported. A copy of the transcript thereof is attached hereto as an appendix.

JURISDICTION

The order of the District Court dismissing the indictment was entered on August 11, 1952. The jurisdiction of the Supreme Court to review on direct appeal an order of a District Court dismissing an indictment, when such dismissal is based on the construction of the statute upon which the indictment is founded, is conferred by the Criminal Appeals Act, 18 U.S.C. 3731. See also Rule 37(a)(2), Federal Rules of Criminal Procedure. The following decision sustains the jurisdiction of this Court: *United States* v. *Gilliland*, 312 U. S. 86, 89. See also *United States* v. *Foster*, 233 U. S. 515, 523.

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QUESTION PRESENTED

Whether the wilful failure to file each individual Information Return on Treasury Form 1099 as required by regulations issued under the authority of Section 147 of the Internal Revenue Code is a separate offense punishable under Section 145(a) of the Internal Revenue Code.

STATUTE INVOLVED

INTERNAL REVENUE CODE:

> Sec. 145[as amended by Sec. 5(c), Current Tax Payment Act of 1944, c. 120, 57 Stat. 144]. PENALTIES.

(a) Failure to file Returns, Submit Information, or Pay Tax.—Any person required under this chapter to pay any estimated tax or tax, or required by law or regulations made under authority thereof to make a return or declaration, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any estimated tax or tax imposed by this chapter, who wilfully fails to pay such estimated tax or tax, make such return or declaration, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year, or both, together with costs of prosecution.

* * * * * * *

(26 U.S.C. 1946 ed., Sec. 145.)

Sec. 147 [as amended by Sec. 202(c)(3), Revenue Act of 1948, c. 168, 62 Stat. 110]. INFORMATION AT SOURCE.

(a) Payments of $600 or More.—All persons, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, and employers, making payment to another person, of rent, salaries,

wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits, and income (other than payments described in section 148(a) or 149) of $600 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Commissioner, under such regulations and in such form and manner and to such extent as may be prescribed by him with the approval of the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payments.

* * * * * * *

(26 U.S.C. 1946 ed., Sec. 147.)

STATEMENT

An indictment in 101 counts was returned against the defendant in the United States District Court for the Western District of Missouri on December 14, 1951. Each count
85 charged a failure of the defendant to file Information Returns on Treasury Department Form 1099 showing payments in excess of $600 to the respective individuals named in each

count. The several counts allege that the defendant was required by the provisions of Sec. 147 of the Internal Revenue Code and Treasury Regulations 111, Sec. 29.147-1, as amended, to make a return in each instance to the Commissioner of Internal Revenue, Process Division, CC Station, Kansas City, 2, Missouri, setting forth in each instance the amount of the payment and the name and address of the recipient.

The defendant moved to dismiss the indictment, contending that it was in part barred by the statute of limitations, and that its several counts do not state offenses within the purview of Sec. 145(a) of the Internal Revenue Code.

The district court dismissed the indictment in its entirety, stating orally that Treasury information returns Forms 1099 were not returns within the meaning of either Sec. 145(a) or 147(a) of the Internal Revenue Code, but were merely attachments or components of Treasury Return Form 1096. Treasury information return Form 1096 is an "Annual Information Return" and is a summary of reports of income payments of $600 or more by the person required to file the return. Treasury Regulations provided (Reg. 111, Sec. 29.147-1) that Information Forms 1099 shall be provided in accordance with the instructions on Form 1096 and attached to 1096 for filing on or before February 15th of the succeeding year. The district court concluded that Congress did not in-

tend that each separate failure to fill out Form 1099 should be made a separate offense but that only one offense could occur by virtue of a failure to file a Form 1096, or a failure to file that form with the proper attachments. The court stated that a maximum of one offense a year could
86 be charged regardless of the number of payments or payees involved.

THE QUESTION IS SUBSTANTIAL

The issue presented in this appeal is one of obvious importance in the administration of federal income tax laws because the district court's construction of Sections 145(a) and 147 of the Internal Revenue Code limits their application to the possibility of one offense per year in regard to returns which, as in this instance, involve repeated delinquencies. It is apparent that Treasury Information Return Fom 1099 is a return within the meaning of Section 147. Cf. *McDonough* v. *Lambert*, 94 F. 2d 838, 841 (C.A. 1st). The purpose of such a return is to provide separate informational reports of payments of the character defined in the statute. Form 1096 on the other hand is merely a summary and a means of transmittal for the primary Form 1099 returns. The latter returns each contain the data that is important and material to the "computation, assessment or collection" of the taxes imposed by Chapter 1 of the Internal Revenue Code. Each provides a means of testing the accuracy of the returns of the payees named. It is,

accordingly, most important that the statutory purpose of Sec. 147 of the code, as implemented by the Treasury Department's regulations, should not be defeated by a construction of Sec. 147, together with Sec. 145(a) of the Internal Revenue Code, which would require all defaults in the preparation of the crucial information returns to be lumped as a single offense.

The Government contends that the Treasury Department could have required the separate submission of returns on Form 1099. The provision, for the convenience of the person required to file the return, that each 1099 form be submitted with still another type of return, i.e., Form 1096, does not consolidate these separate informational reports into a single return. As this Court stated in *Commissioner* v. *Lane-Wells Co.*, 321 U. S. 219, 223, "Congress has given discretion to the Commissioner to prescribe by regulation forms of returns and has made it the duty of the taxpayer to comply. * * * The purpose is not alone to get tax information in some form but also to get it with such uniformity, completeness, and arrangement that the physical task of handling and verifying returns may be readily accomplished. For such purposes the regulation requiring two separate returns for these taxes was a reasonable and valid one and the finding of the Board of Tax Appeals that the taxpayer is in default is correct".

It is submitted that the decision of the District Court is erroneous and that the question presented by this appeal is a substantial one which should be settled by the Supreme Court.

Respectfully submitted,

ROBERT L. STERN
Robert L. Stern
Acting Solicitor General

SEPTEMBER, 1952

(Filed in the U. S. District Court September 8, 1952.)

88 IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

No. 18188

UNITED STATES OF AMERICA, *Plaintiff*,

v.

JAMES J. CARROLL, *Defendant*.

Transcript of the Court's Remarks in Passing Upon Defendant's Motion to Dismiss Before Honorable Richard M. Duncan, District Judge, August 11, 1952

THE COURT:

"With a possible exception of one or two matters ruled on here, the Court has given this matter a great deal of thought. It has been here a long time and I have walked around with this thing on my mind a lot because it presented some unusual questions.

"It arose in a rather unusual manner in its inception. That is none of the Court's business at this time, however, but there are some questions of law that I have constantly had in mind in connection with certain other cases that I have had.

"In the first place, gentlemen, I am going to disagree with both of you rather sharply. I think usually when the Court disagrees sharply with both sides, the Court is likely to be right. So that is going to be the Court's position here.

"As I stated this morning, I do not believe that it was the intention of Congress that the failure to report each item required by the statute rates a separate and distinct crime. The statute says that a person paying an amount in excess of $600 for certain things should be reported on or by the 15th of February of each year. I think that it was the intention of the statute that a return should
89 be made containing that information. I think that Form 1096 is the form that is anticipated required by the statute and that the information which has been described here as being required in Form 1099 as a part of 1096. I don't think they are separate and distinct. I think that it is one. I think that 1096 is the one that the law requires and that the information contained in 1099 must be made a part of 1096. I think if that information is not contained in 1096, that the person who is required to file the form might be indicted for making a false return and not for a separate and distinct offense. Now those are two things.

"I think that the failure to file each item, that is as in this case it is alleged—or whether it is alleged or not, it is common knowledge—that it is the charge that the money paid here went to persons who had won in games of chance and there were a great many of them, and it is the Court's thought that each one of those does not constitute a separate offense, but that all of them should have

been included in Form 1096. If they were not, then after the form was filed, it would have been an offense for making a false return and then, pursuing that just a bit further, the Government has the authority under the statute to resort, may we say, to the Rules of Discovery, to get that information, to come into a court of equity and require that it be done, but I will get into that a bit later.

"For that reason, I think as I stated this morning, I was thoroughly convinced that the first indictment, 18,188, would as to all counts except one for each year, have to be dismissed.

"In view of what has transpired here, I must go further and hold that the indictment itself must be dismissed because, in the opinion of the Court, it is not a violation of the law to fail to file under Form 1099, but it is a violation to fail to file 1096.

"So it will be the ruling of the Court that the *Motion to Dismiss as to 18,188 will be sustained.*"

90 "We next come to 18,189. Now, gentlemen, I may be wrong. I am often wrong. The Court of Appeals has repeatedly said so, but I am still trying.

"The question of venue under our modern practice and theory of government is becoming a most serious one and I think all who think economically as well as legally in this complicated age must realize that we are living in a new and complicated age.

"The income tax laws are probably among the most complicated that are upon the statute books. You will pardon any personal reference. It is not anything new, but I either had the privilege or the misfortune, whichever it may have been, to have served for eight years on the Ways and Means Committee in the Congress and on the subcommittee writing tax bills, and the head of the drafting service I think probably knew more federal law and federal statutes than any other man in the United States. I remember one day after spending days and days with all the experts from the Treasury Department and the Internal Revenue Department and our own staff, the Joint Committee worked out some theory that should go into the law. It came back in language which none of us could understand. We asked him about it and he smiled one of his rare smiles and said, 'Well, you know we live in the most complicated government in the world and when you try to put within 150 or 200 pages all of the conditions necessary to the collection of taxes in this country, you are going to have to use some complicated language or you won't collect the taxes. The fellows on the outside are working harder to keep from paying them, not criminally, but just protecting themselves, than they are on the inside trying to collect them.' And that was not a reflection on anybody. Of course, it is necessary to make rules and regulations.

"Following that statement through, if you didn't confer upon the Internal Revenue Depart-

ment and the Treasury Department the rule making authority to make rules and regulations with respect to the collection of taxes, that tax bill would have to have probably 1,000 pages instead of 150 or 200. So naturally, authority has been conferred to make reasonable rules and regulations within the four corners of the law itself, and when they go beyond that, then they are not reasonable rules and regulations, and I think the Court has a perfect right to disregard them. It would be illegal if they were not within the four corners of the law itself, and I am not saying that the ones here are not. I think they are.

"But the question of venue comes again not only in the collection of revenues, but in the enforcement of many other of our modern laws to meet modern conditions. They have set up zones, districts within which the law is to be adminstered. My own personal view, as a lawyer and as a judge, that the venue laws ought not to be changed as a result of those rules and regulations. I don't think it is right legally. I disagree with my judicial brethren who are my superiors in these matters. I do not think it is right that a man from St. Louis should be brought to Kansas City to answer to the law. I do not think a man from Kansas City should be required to go to New York to defend against some violation of the law. I think
91 it ought to be prosecuted in the place where he lives as it is in almost every other in-

stance. There are a few others where the violation has occurred in two or three different states, or it is a continuing one, such as the violation of the Postal Regulations, and some other matters, but we are getting to that sort of thing. We are bringing our citizens sometimes to some places hundreds of miles away, and under this law you would bring them for thousands of miles to Kansas City to prosecute them. I do not think it is right. I do not think it ought to be the law, but I do think that the courts have held that it is the law and I think I am bound by it. But I think when the department through their regulations have said that it must be filed in a certain place, I do not think that sometime, a few years later, you can come in and say, 'We didn't mean that; we think it should be filed some place else.'

"Gentlemen, your regulations provided that the returns for 1947 and 1948 should be filed in New York City. You say you have moved the Processing Division out here. That is true and the Government says here that when they processed them then they sent them back to the Collection District.

"This Court is only bound by the law as it is written. This Court must take judicial notice of the rules and regulations of the Bureau of Internal Revenue, and every other bureau, when they are published in the Federal Register, and when that has been done, then that is the law and

is binding upon every citizen of the United States. It is binding upon the Court and it is not binding until that is done. Actual notice is not sufficient.

"So I do not think that you have any right to say that a man who under the law was required to file his return in New York on February 15, 1948, can in 1951 be indicted for failure to make that same return in Kansas City. I just don't believe, gentlemen, that that is the law, that you can shift your venue by any will or whim or caprice, and I don't mean that disrespectfully of anyone. I don't believe you can do that and that is going to be the ruling of this Court and the Motion to Dismiss will be sustained as to that count, Count I, because in the opinion of the Court it was required to be filed in New York, and the order did not become a law until after the filing time had expired requiring it to be filed in Kansas City, although the processing district was here and had been here for quite some time.

"Now we get around to the other two counts. I cannot agree with Mr. Schenker that this is strictly a civil proceeding. I think the statute required that the form be filed. The purpose of it is obvious and always has been that we have, of course, a great many citizens who may not be in such economic condition as to require the filing of a return under normal conditions. It is difficult to check up on them. Therefore, this statute was passed, but those who are paying money to other persons

should report it so that the Government may know who is receiving income. Of course, we realize that in certain cases it may be a little bit of a hardship, but it is nevertheless the law. I can think of many, many instances where it might be disastrous, both to the recipient and to the payer of the money, to have to account for it, but, nevertheless, it is the law and the Government has a right to have that information, and if they are going to require that sort of thing, then they should do whatever is necessary to do about it. I think the statute does require a return and I think there is a criminal penalty for failure to comply with it, failure to make a return, and I think a 'return' means any return that is required by the statute, a declartion or whatever it is, and that failure to do so would subject the violator to the penalty.

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"With that in mind, the *Motion to Dismiss will be overruled as to Counts II and III.*

"What comes next, gentlemen? Has there been a plea in this case?

"MR. SCHENKER: I was just wondering if the defendant had been arraigned.

"THE COURT: I don't think he has.

"MR. SCHENKER: I don't think so.

"THE COURT: We had better have the arraignment. I think there has been no plea in either this case or the other case.

"MR. SCHENKER: I am sure there wasn't any in the other one.

"THE COURT: I don't think there has been any in this case. I think you were here.

"MR. SCHENKER: That is right.

"THE COURT: And got leave to file these motions and they have been going along here for a long period of time, through the fault of no one.

"MR. SCHENKER: That is correct.

(Whereupon, discussion was had off the record.)

"THE COURT: If your client will come forward.

"MR. SELTZER: Could the record show that the Government excepts to the ruling?

"THE COURT: All exceptions are saved.

(Whereupon, discussion was had off the record.)

"THE COURT: What is the plea of the defendant?

"MR. SCHENKER: Not guilty, if the Court please.

"THE COURT: A plea of not guilty.

"Now, gentlemen, about a trial. You have some motions to make more definite and certain and I think, gentlemen, that the indictment complies with the law. We realize that under the New Rules of Criminal Procedure it does not require very much to make an indictment good. There may be some information that you are entitled to and, if the Court can simply express his
93 opinion about it I think the Government is not required to give up its evidence as such, but such books and records and certain things that were taken from the defendant, certainly you have

a right to them and to see them, and there may be some other things.

"MR. SCHENKER: I might say this in order to be perfectly fair with the Court, that our Motion for Discovery and Inspection was premature excepting I wanted to get all our motions in because in order to really come within the terms of U. S. versus Bauman, we should strictly also have filed a subpoena duces tecum but we could not have done so without knowing what they would file.

"THE COURT: I think that you probably have as much information and know whatever they know about it, and if they have taken any books and records away from your client, you are certainly entitled to them.

"MR. SCHENKER: I don't believe that condition exists.

"THE COURT: Whatever they have done in the preparation, I think you are not entitled to see. I am rather liberal in my views about these matters and yet I do not think the defendant is entitled to search the soul and conscience of his opposition too deeply.

"Now, what about a trial of it, gentlemen?

"MR. SCHENKER: Before that question may I call to the Court's attention—I believe you indicated I was thinking in terms of a bill of particulars.

"THE COURT: If there is a Motion to Dismiss the indictment that I haven't passed on, it will be done.

"MR. SCHENKER: It was passed on. The only thing I was thinking about a bill of particulars is that there are certain matters which we can raise if the Government were to file a bill of particulars which appears to me would undoubtedly go a long way towards expediting the question of a trial. I indicated to the Court before that when the criminal information was filed the Government alleged that these payments were gains as a result of gambling activities substantially and I believe they also indicated something on the question of a demand. Well, the question of a demand is not pertinent now in view of the Court's ruling, but the question as to the source or the reason for those payments, and so forth, that is pertinent and material. For instance, it would certainly give the position of the Government whether it is their contention that payments made as a result of gambling ventures were covered by 147. It would also give this question and have the Government state whether it is a net proposition over the end of the year, the gains and losses with the final result or whether it is simply regardless of the losses by the person that made the wager.

"THE COURT: I can give you my thought about it very quickly. Would you say the demand is out of the situation so far as the defendant in this case is concerned? And may I assume for
94 the purpose of this discussion—it is not on the record—I assume that all these transactions were based upon gambling.

"MR. SCHENKER: That is a proper assumption.

"THE COURT: So I may assume that. The Court never likes to assume anything that may get anyone in trouble.

"MR. SELTZER: Payments were made in connection with gambling transactions.

"THE COURT: Now, I thought, gentlemen, that any sum paid to any individual as a result of a wager would under the statute have to be returned. Now, whether that is a gain or a loss, certainly it is a gain to the—shall we say the defendant in this case? If I take myself as an example, if I bet $1,000.00 and as a result of that I get $600.00 back, not the $1,000.00, but $600.00 in addition.

"MR. SELTZER: That is right, $1,600.00.

"THE COURT: $1,600.00 back. Then that $600.00 is reported, must be reported so far as the other individual is concerned. It may be a gain or maybe it isn't. He has to account for that, but any amount he pays in excess of the amount that was deposited with him for the purpose of making a wager would have to be returned. That would be my legal conception.

"MR. SCHENKER: That would be correct; your conception would be correct regardless of the fact that perhaps the transaction involved one day where there was a payment of say $600.00 and the next day that same $600.00 came back.

"THE COURT: That is right.

"MR. SCHENKER: That would still be the Court's opinion.

"THE COURT: That is my opinion whenever he pays him $600.00 on a gambling obligation, the amount of $600.00.

"MR. SELTZER: More than $600.00 in the year.

"THE COURT: He has to account for it if he pays him more than $600.00, and, of course, he wouldn't pay him $600.00 in addition to the amount of the wager; if it would appear in evidence I came in here and bet $1,000.00 and I got a check back for $1,000.00. That was simply the amount that I wagered and for some reason I didn't win anything, but if I win more than $600.00, then it has to be reported.

"MR. SELTZER: Even though you lost the same amount of money to the same man the next day.

"THE COURT: That is right. In other words, if he has paid him that amount of money, that is a matter of adjusting. That is the very purpose of this thing. This statute was to keep track of it and I can see how it is pretty tough on a business of this kind.

95 "MR. SCHENKR: I don't want to belabor the situation but it would be most interesting if the Government would attempt to enforce that law on dice games that a man pay or wager his money some forty times within a period of ten or fifteen minutes, and it would be most interesting to attempt to enforce it.

"THE COURT: It is like a transaction that multiplies itself so often. I have sat around the counsel

table many, many days discussing with some of the folks who had a little more advanced ideas about imposing a tax on gambling, and after days of discussion, nobody has ever come up with any substantial or sound plan for taxing gambling so you get the money out of it that I have ever seen or heard of, except at the race track where it is out in the open. I think that is the law, gentlemen. That is the intention of the statute and that would be the ruling of the Court if I were to charge the jury. I would say to them that that was my opinion of the law that any amount of $600.00 and up would have to be reported. Whether he lost it the next day would be of no concern, he would have to account for that. That is, the individual to whom it is paid and not the one who is required to make the return.

"That is my thought and that will be my thought unless there is something to the contrary because I don't know of any law—

"MR. SCHENKER: We haven't been able to find any.

"THE COURT: We are kind of pioneering this thing.

"MR. SCHENKER: We haven't been able to find any and I was just wondering whether we should not have attacked this law because it is just incapable of being enforced as to all things.

"THE COURT: I think there are a number of things like that, but it is not for this Court to say.

We have had some others in the past that were unenforceable but they were on the books and they had to be looked after. I am not critical of the law. We are just making a practical situation. I think it is a perfectly good law and one that has resulted in the Government's ability to collect taxes where they otherwise might not have obtained them.

"So that brings us back to where we are going and you may not be back here again for sometime. If we can agree on some time to set the case or if in the meantime we have to pass upon some formal matters, we can do that.

"MR. SCHENKER: Very well.

"THE COURT: But there is not very much here that I see where a bill of particulars will aid you.

"MR. SCHENKER: Frankly, that practically answered the point. While I am objecting and saving exceptions, it does enlighten me on the matter that I wanted to get at, and I am very appreciative to the Court for that.

"THE COURT: If I should change my mind about the situation, I think I should advise counsel on both sides.

96 "MR. SCHENKER: Those are the things that I wanted to raise and there was no way I could raise them as the indictment stood.

"THE COURT: All right.

(Whereupon, discussion was had off the record, at the conclusion of which the Court announced

that said case would be set for trial on November 17, 1952.)

"THE COURT: Let the record show that the bill of particulars is overruled. That does not mean, gentlemen, that if some matter should develop in the meantime I am going to preclude you from filing another motion.

"MR. MURPHY: That still leaves the motion for discovery but I believe Mr. Schenker said that might be premature.

"MR. SCHENKER: I was going to make this suggestion, as to the motion for discovery, if the Court did not rule on it or would just pass it.

"THE COURT: I am willing to pass it now because if when you get into the preparation of it there is anything that you gentlemen cannot agree on, either that the Government has and that you want, you can refer it to the Court and the Court can pass on it. I think that is the better way to handle it.

"MR. SELTZER: So there would not be any further argument on it?

"MR. SCHENKER: No.

"THE COURT: You gentlemen are not going to have any difficulties.

"MR. SCHENKER: I am perfectly willing to admit that my motion is premature at this time, my Motion for Discovery.

"THE COURT: Let the Motion for Discovery and inspection remain on the docket, just make no

order about it. Just leave it undisposed of by failure to mention it.

"Gentlemen, I want to congratulate both of you on the thoroughness with which you have briefed this matter and gone into a difficult situation. It is a new situation, as I see it.

"MR. SCHENKER: Thank you very much.

"THE COURT: You have both done a splendid job and represented your clients with fidelity.

"MR. SCHENKER: Thank you, your Honor.

"MR. SELTZER: Thank you, sir."

U. S. GOVERNMENT PRINTING OFFICE 195[illegible]—230877/P O 679

No. 442

In the Supreme Court of the United States

OCTOBER TERM, 1952

THE UNITED STATES OF AMERICA, APPELLANT

v.

JAMES J. CARROLL

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI

BRIEF FOR THE UNITED STATES

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BRIEF FOR THE UNITED STATES

OPINION BELOW

The oral opinion of the District Court (R. 66-67) dismissing the indictment in case No. 18188 (which is the only one in which this appeal is presented) has not been reported.

JURISDICTION

The order of the District Court dismissing the indictment was entered on August 11, 1952 (R. 65, 76). The United States filed its notice of appeal to this Court on September 8, 1952 (R. 65, 77). The jurisdiction of this Court was invoked under the Criminal Appeals Act, 18 U. S. C. 3731. On September 23, 1952, appellee filed a statement opposing the jurisdiction of this Court as to the

first 45 counts, charging offenses during the year 1948 (R. 77). On December 15, 1952, this Court postponed further consideration of the question of jurisdiction to the hearing of the case on the merits (R. 78).

QUESTIONS PRESENTED

1. Whether this Court has jurisdiction to review the dismissal of the first 45 counts of the indictment, as to which, it is argued by appellee, the alternative ground of want of venue was a basis for the order of dismissal.

2. Section 147 (a) of the Internal Revenue Code requires anyone who pays to another person determinable profits or income in the amount of $600 or more during any taxable year to "render a true and accurate return" thereof to the Commissioner of Internal Revenue under such regulations as may be prescribed. Treasury regulations require each such payor to file a "return" for each payee on Treasury Form 1099, showing the total amount of the payments for the year and the name and address of the payee. The regulations further require that these forms be forwarded to the Commissioner, together with a transmittal Treasury Form 1096, showing the total number of "returns" on Form 1099. The question presented on the merits is whether, within the meaning of Section 145 (a) of the Internal Revenue Code, each Form 1099 is a "return", the making of which is "required by law or regulations made

under authority thereof", so that each willful failure to file such a form is a separate misdemeanor.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and regulations are set forth in Appendix A, *infra*, pp. 40–44.

STATEMENT

On December 14, 1951, two indictments, No. 18188 and No. 18189, were filed in the United States District Court for the Western District of Missouri, charging the appellee with violations of Section 145 (a) of the Internal Revenue Code (Appendix A, *infra*, p. 41) by numerous failures to file for the years 1948, 1949, and 1950 information returns required by Section 147 (a) and the regulations thereunder (R. 1–53). On August 11, 1952, the indictment in No. 18188 was dismissed as to all counts (R. 65). The Government has taken the present appeal solely from that order of dismissal (R. 75).

On the same day, August 11, 1952, one of the three counts in No. 18189 was also dismissed (R. 65). There was no appeal from that order, and trial on the other two counts of that indictment has been postponed pending the outcome of the present appeal. Appellee has, however, designated for inclusion in the record on this appeal a large part of the proceedings in No. 18189 to provide a basis for his contention that this Court

lacks jurisdiction to review directly the District Court's dismissal of the first 45 counts in No. 18188.

1. The returns which appellee allegedly willfully failed to file are required by Treasury Regulations 111, Section 29.147–1, to be filed on the following forms:[1]

Form 1099.—All persons are required by the regulations to file a return on this form in each instance in which they have, during the taxable year, made payments to another person of determinable income in excess of $600. The form contains space for the name and address of the payee, the name and address of the payor, and the amount of salaries, fees, interest, rents, dividends, annuities, and other determinable income paid over.

Form 1096.—This is a covering form which is used to summarize and transmit all the copies of Form 1099 which the payor files. It contains spaces only for the name and address of the payor, the number of Forms 1099 forwarded, and a declaration of the truth of the information submitted. It also contains instructions as to the preparation and filing of both forms. The reverse side, not material here, contains a statement relating to dividend distributions claimed to be nontaxable.

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[1] The regulation is set forth in Appendix A, *infra*, pp. 42–44. Copies of the two forms for the taxable year 1950 are reproduced in Appendix B, *infra*, pp. 45 and 47. The forms for 1948 and 1949 contain no material variations.

2. The proceedings in the District Court may be summarized as follows:

Case No. 18188.—In this case, which is the only one in which this appeal is presented and which, therefore, we think to be the only one properly before the Court, an indictment in 101 counts was returned against appellee charging failures to file information returns on Form 1099. Each count alleges that appellee made payment of a sum in excess of $600 to a named individual during a stated year; that appellee was required by the provisions of the Internal Revenue Code and the applicable Treasury Regulations to make a return, on or before February 15 of the following year, setting forth the amount of the payment and the name and address of the recipient; that the return was to be made to the Commissioner of Internal Revenue, Processing Division, Kansas City, Missouri; that the return was to be made on Treasury Form 1099; and that appellee willfully failed to make such a return. Counts 1 to 45, inclusive, allege payments during the calendar year 1948 (R. 1–21). Counts 46 to 81, inclusive, allege payments during 1949 (R. 21–37). And counts 82 to 101 allege payments in 1950 (R. 37–46).

On January 31, 1952, appellee filed a motion to dismiss the indictment (R. 53–58). Among numerous grounds advanced in support of the motion, the contention was made that the indict-

ment did not charge an offense because Treasury Form 1099 does not constitute a "return" within the meaning of the Internal Revenue Code (R. 58). On August 11, 1952, a supplemental motion to dismiss was filed in which it was contended that the District Court had no jurisdiction over the first 45 counts of the indictment (covering returns for the year 1948, due to be filed on or before February 15, 1949) for the reason that the Treasury Regulations in effect on February 15, 1949, required that returns of information be filed in New York City rather than in Kansas City as alleged in the indictment (R. 63–64).

The indictment was dismissed by the District Court on August 11, 1952, and an order was entered discharging appellee and exonerating his bond (R. 65, 67). In its oral opinion (R. 66–67), the court stated as the single ground for its order of dismissal that Congress, in enacting Section 147 (a) of the Internal Revenue Code, intended to require the filing of only one yearly return showing the names of all persons to whom payments in excess of $600 had been made; that Form 1099, the individual information form, is not the return contemplated by the statute; that only the transmittal form, 1096, is the return required by the statute; and that, consequently, the indictment in this case, charging failures to file Form 1099, failed to allege any failure to file a "return" under Section 145 (a) of the Code, thus stating no offense. Summarizing these views, the court said (R. 67):

> I think that the failure to file each item, that is as in this case it is alleged—or whether it is alleged or not, it is common knowledge—that it is the charge that the money paid here went to persons who had won in games of chance [2] and there were a great many of them, and it is the Court's thought that each one of those does not constitute a separate offense, but that all of them should have been included in Form 1096.

Case No. 18189.—The indictment in this case, involved in this appeal only as a basis for appellee's jurisdictional argument as to the first 45 counts in Case No. 18188, contains three counts (R. 47–53). The first count (R. 47–49) alleges that during the calendar year 1948 appellee paid to 45 named persons sums in excess of $600; that appellee was required, by the provisions of the Internal Revenue Code and the applicable Treasury Regulations, to make a return on Treasury Form 1096, on or before February 15, 1949, setting forth the number of returns on Treasury Form 1099 attached thereto; that this return was to be made to the Commissioner in Kansas City; and that appellee had willfully failed to make such a return. The second count (R. 49–51) alleges payments in excess of $600 to 36 named individuals during 1949 and a willful failure to file a return on Treasury Form 1096 on or before

[2] Defense counsel conceded that this was a proper assumption (R. 71–72).

February 15, 1950. The third count (R. 51–53) alleges similar payments to 20 individuals [3] during 1950 and a similar default as to Form 1096.

As in Case No. 18188, a motion to dismiss this second indictment was filed on January 31, 1952 (R. 58–63), in which it was urged *inter alia* that Treasury Form 1096 was likewise not a "return" within the meaning of Section 145 (a) of the Internal Revenue Code (R. 63). And a supplemental motion, similar to that filed in No. 18188, sought dismissal of the first count of this indictment on the ground that returns for 1948 were to be made in New York City rather than in Kansas City (R. 64).

The court dismissed the first count on the ground of improper venue, holding that, since the regulations in effect on the due date for 1948 returns required filing in New York City, prosecution would not lie in the Western District of Missouri, which includes Kansas City (R. 69). The other two counts were upheld, and an appropriate order was entered on August 11, 1952 (R. 65). There was no appeal, and the case is still pending in the District Court.

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

1. In holding that Section 147 (a) of the Internal Revenue Code requires persons making

[3] It will be noted that the names of the payees and the amounts paid as alleged in Case No. 18188 correspond with the allegations in Case No. 18189.

payments to another of determinable income in excess of $600 during a taxable year to make only a single information return, regardless of the number of recipients of such payments.

2. In holding that a willful failure to file a return on Form 1099, as required by Treasury Regulations 111, Section 29.147–1, is not a misdemeanor under Section 145 (a) of the Internal Revenue Code.

3. In granting the motion to dismiss the indictment.

SUMMARY OF ARGUMENT

I

The only ground for dismissal of the indictment involved in this appeal was the District Court's ruling that Treasury Form 1099 is not a "return" and that the willful failure to file such a form is not, therefore, the willful failure to file a return denounced as a misdemeanor by Section 145 (a) of the Internal Revenue Code. The record does not sustain appellee's claim that the additional ground of want of venue was reached by the District Court in dismissing the first 45 counts of the indictment.

Accordingly, as to the first 45 counts as well as the remainder of the indictment (regarding which no jurisdictional issue is or could be raised), only the single question of statutory construction is presented. The venue problem could not properly have been raised by the Government, and it has not

been assigned as error. Nor is it open to appellee as a basis for sustaining the dismissal of the first 45 counts. *United States* v. *Borden Co.*, 308 U. S. 188, 193; *United States* v. *Beacon Brass Co.*, 344 U. S. 43, 47.

II

Each Form 1099 is a "return" required by Section 147 (a) of the Internal Revenue Code and the clearly appropriate Treasury Regulations thereunder. This is evident from the statutory language itself, from the obvious purpose of obtaining separate information as to each individual payee and potential taxpayer, and from the unambiguous terms of the administrative regulations which have not only been approved by repeated reenactments of the statute, but have been in effect extended to closely related provisions of the Code by subsequent legislation.

1. Section 147 (a) is phrased in terms of a "return" for each "recipient" of payments of $600 or more. Brief reflection makes plain the necessity for such a requirement. Apparent from the face of the statute—and, in any event, made explicit by the legislative history—the purpose of the provision which is now found in Section 147 (a) of the Code is to obtain information as to possibly delinquent payee-taxpayers. This purpose can only be served by a system of separate returns for separate payees which makes feasible the essential task of filing and checking.

2. Over 35 years ago, when the substantially identical predecessor of Section 147 (a) was adopted, the Treasury promulgated regulations which left no room for denying that a separate return on Form 1099 was required for each payee. The prescribed Form 1099 is the only one which provides the information called for by the statute. It is, therefore, the only form in existence which can properly be described as a "return" within the statute. Cf. *Florsheim Bros. Co.* v. *United States*, 280 U. S. 453.

This conclusion is unshaken by the fact that the Treasury has prescribed a transmittal form—Form 1096—to which the Forms 1099 for any year are to be attached and which is to show "the number of returns filed" on Forms 1099. The transmittal form serves the obvious purposes of convenience and double-checking. But if the Treasury had designed no such device—if it had simply permitted the Forms 1099 to be forwarded separately and at various times—the situation would be no different in essence. The individual information returns on Form 1099 would be, as they now are, separate returns.

3. The Treasury's regulations, requiring a separate return for each payee, have been approved by repeated reenactments of the statute without material amendments. If anything, the amendments, by consistently keeping the minimum amount of payments requiring an information

return the same as the amount requiring the filing of an individual income tax return, have reflected the continuing awareness of Congress that each information return was designed as a check upon an individual recipient of income.

Far more significantly, in providing in subsequent legislation for withholding of income taxes by employers and for the furnishing to each employee of a withholding statement (showing the employee's name, his address, and the amount of income paid to him), Congress has provided that a copy of such an individual withholding statement may be filed as "the return required" under Section 147 of the Code. Section 1633 (b), Internal Revenue Code. This is a striking affirmation of the view of Congress that *the return* required by Section 147 (a) is a return as to an individual payee.

Moreover, Congress has provided for separate punishment as a misdemeanor for each willful failure to supply an employee with a withholding statement. Section 1626 (a), Internal Revenue Code. And the legislative history of this provision shows that it was adapted as an analogue from the corresponding provision in Section 145 (a) punishing the failure to file the corresponding return with the Government.

4. Because each Form 1099 is a "return" within the income tax law and regulations, it necessarily follows that each failure to file such a return is a misdemeanor under Section 145 (a), for the terms of that section make clear that any single failure to file any single return constitutes the offense.

Congress has frequently provided for similar separate units of prosecution. Thus, under a statute making it unlawful to "sell" narcotics, two sales to the same buyer constitute two offenses. *Blockburger* v. *United States,* 284 U. S. 299. Similarly, a statute punishing the cutting of "any mail bag" defines as six offenses the cutting of six mail bags at the same time. *Ebeling* v. *Morgan,* 237 U. S. 625. While considerations relevant in fixing sentences may lead to the conclusion that 101 willfully neglected returns should not be assessed mechanically at 101 times the weight of one, the problem of determining an appropriate punishment cannot be avoided in a case of this type "by judicial legislation under the guise of construction." *Blockburger* v. *United States, supra,* at 305. Congress has defined as separate offenses the failures to file individual returns with which the appellee is charged. We submit that this mandate is controlling here.

ARGUMENT

I

THIS COURT HAS JURISDICTION TO REVIEW THE DISMISSAL OF THE ENTIRE INDICTMENT. THE DISMISSAL AS TO ALL COUNTS WAS BASED ON THE SINGLE GROUND THAT NONE OF THEM STATED AN OFFENSE WITHIN SECTION 145 (A) OF THE INTERNAL REVENUE CODE

The Criminal Appeals Act, 18 U. S. C. 3731 (Appendix A, *infra*, p. 40), gives to the United States the right to appeal directly to this Court where the dismissal of an indictment, or any count thereof, is "based upon the * * * construction of the statute upon which the indictment * * * is founded." In the present case, it is necessarily conceded that, insofar as it rests upon the single ground that a failure to file a return on Treasury Form 1099 does not constitute an offense within Section 145 (a) of the Internal Revenue Code, the District Court's order of dismissal is reviewable directly by this Court. Since it is not contended that the dismissal of counts 46 through 101 of the indictment rested upon any other ground, the jurisdiction of this Court to review the dismissal of these counts is undisputed. *United States* v. *Rosenwasser*, 323 U. S. 360, 361; *United States* v. *Foster*, 233 U. S. 515, 522–523.

Appellee contends, however, in his Statement Opposing Jurisdiction that, as to counts 1 through 45 of the indictment, this Court lacks jurisdiction because the District Court's order of

dismissal was based not only upon a construction of the statute, but also upon the additional and independent ground of improper venue. We think the record shows clearly that the one ground of statutory construction presented by the Government's appeal was the sole basis for dismissal of all counts of the indictment involved in this case. The question of venue was not reached by the District Court in this case.

The District Court's complete statement of its grounds for dismissing the indictment in Case No. 18188, the case in which this appeal is prosecuted, begins on page 66 of the record and concludes at the end of the fourth full paragraph on page 67 with "the ruling of the Court that the *Motion to Dismiss as to 18,188 will be sustained.*" The court ruled, in short, that Form 1099 is not a return the failure to file which violates Section 145 (a). The next paragraph of the court's oral opinion begins, "We next come to 18,189." Thereafter, the District Court confined its discussion to the latter case, and made no further reference to No. 18188.

Appellee argues, however, that the dismissal for want of venue of the first count of No. 18189 governs as well the first 45 counts of No. 18188 and must be deemed an additional ground for the dismissal of these latter counts. The argument runs as follows: On February 15, 1949, the due date for 1948 returns on Forms 1096 and 1099,

the regulation provided for filing with the Processing Division in New York City. T. D. 5313, 1944 Cum. Bull. 308. On February 16, 1949, an amendment was approved requiring that the returns be filed with the Processing Division in Kansas City. T. D. 5687, 1949–1 Cum. Bull. 9. This amendment appeared in the Federal Register on February 24, 1949. 14 Fed. Reg. 826. However, the argument continues, since the published regulations in effect on February 15 required filing in New York City, venue for prosecution for failure to file the 1948 returns lies in New York rather than in Missouri where both indictments against appellee were returned.

There is no doubt that this argument was adopted by the District Court as its ground for dismissing the first count of the indictment in No. 18189, the case which is not before this Court on this appeal (R. 69). Moreover, the court *could* have based its dismissal of the first 45 counts in No. 18188 on the same ground. But it did not do so; this particular ground of decision was not even mentioned by the District Court in connection with the dismissal of the indictment in No. 18188. Nor was there any reference back to No. 18188 in the portion of the District Court's statement dealing with No. 18189.

Although the ruling as to venue would have been reviewable by this Court had it been made in

this case,[4] contrary to appellee's view that such a ruling is not a ground for direct appeal, no error as to any such ruling has been assigned. (Nor has the Government appealed from the dismissal of the first count of No. 18189.) The question of venue, undetermined in this case by the court below and in any event not specified in the assignment of errors, is therefore not before this Court.

We recognize, of course, that if this Court should reverse and reinstate the indictment, the first 45 counts will almost certainly be dismissed by the District Court on the venue point the appellee raises. But this does not mean that the Government could have presented the question on the appeal in this case. For the point was not passed upon in this case, and the Criminal Appeals Act does not permit appeals to this Court to present issues not the basis for the District Court's decision.

It is equally clear that the point is not open to appellee as a ground for sustaining the order of dismissal as to the first 45 counts. "When the District Court has rested its decision upon the construction of the underlying statute this Court is not at liberty to go beyond the

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[4] Cf. *United States* v. *Lombardo*, 241 U. S. 73; *United States* v. *Johnson*, 323 U. S. 273; *United States* v. *Anderson*, 328 U. S. 699; *United States* v. *Wilson*, Nos. 197 and 198, this Term, decided February 2, 1953.

question of the correctness of that construction and consider other objections to the indictment. The Government's appeal does not open the whole case." *United States* v. *Borden Co.*, 308 U. S. 188, 193. See to the same effect, *United States* v. *Beacon Brass Co.*, 344 U. S. 43, 47; *United States* v. *Petrillo*, 332 U. S. 1, 5; *United States* v. *Classic*, 313 U. S. 299, 309; *United States* v. *Hastings*, 296 U. S. 188, 192; *United States* v. *Keitel*, 211 U. S. 370, 398.

II

SECTION 147 (A) OF THE INTERNAL REVENUE CODE AND THE TREASURY REGULATIONS ADOPTED PURSUANT THERETO REQUIRE A SEPARATE INFORMATION RETURN ON TREASURY FORM 1099 FOR EACH PAYEE OF $600 OR MORE DURING A TAXABLE YEAR. EACH WILLFUL FAILURE TO FILE SUCH A RETURN CONSTITUTES A SEPARATE MISDEMEANOR UNDER SECTION 145 (A) OF THE CODE

The language, the purpose, and the history of Section 147 (a) make it clear that Congress required a separate information return, as to each payee and potential taxpayer, from persons making payments of $600 or more to other individuals during the taxable year. If the statute left any doubt of this requirement, the doubt would disappear in view of the unambiguous Treasury Regulations which have implemented Section 147 (a) and substantially identical predecessor statutes dating back to the Revenue Act of 1917. Congress has not only approved these regulations in repeated reenactments of the statute;

it has gone further and, by allowing an individual withholding statement to serve as *the return* required by Section 147 (a), has affirmatively reemphasized its command that a separate return is required for each payee.

We shall show here that each completed Treasury Form 1099 constitutes a "return" required by Section 147 (a) of the Code. Because this is so, and because Section 145 (a) of the Code makes it a misdemeanor willfully to fail to file a return required under the income tax laws, we submit that the District Court erred in dismissing the indictment.

1. Section 147 (a) of the Code (Appendix A, *infra*, pp. 41–42) provides in pertinent part that

> All persons * * * making payment to another person, of * * * fixed or determinable gains, profits, and income * * * of $600 or more in any taxable year * * * shall render a true and accurate return to the Commissioner, * * * setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

This language plainly contemplates the filing of an individual information return for each individual payee. A return is required wherever payments exceeding the stated minimum have been made to "another person * * *." And the contents of the return are similarly defined in terms of the individual payee; the return is

to state the amount of the payments for the taxable year "and the name and address of *the recipient* of such payment." Had Congress intended that only a single return covering all payees should be required, it could easily have stated that intention by changing five words from the singular to the plural. Congress could have said: "All persons * * * making payment to other persons * * * shall render a return * * * setting forth the amounts * * * and the names and addresses of the recipients * * *."

Instead, Congress chose language aptly suited to the informational purpose for which returns under Section 147 (a) were designed. As the court below recognized (R. 69), this obvious purpose is to provide a means of locating and checking upon recipients of income and the amounts of income they receive. While the source of the return is the payor, the object of the return is the acquisition of information regarding the individual payee or payees. Clear enough on the face of the statute, this object was explicitly emphasized by the authors of the provision in the Revenue Act of 1916[5] which was to be followed by a series of substantially identical (at least for present purposes) successor statutes culminating in what is now Section 147 (a) of the Code. Speaking of this provision (which replaced a withholding requirement contained in

[5] Section 28, Revenue Act of 1916, c. 463, 39 Stat. 756, added by Section 1211, Revenue Act of 1917, c. 63, 40 Stat. 300, 337.

the original income tax law), the Senate Committee on Finance recommended (S. Rep. No. 103, 65th Cong., 1st sess., 20, 1939–1 Cum. Bull. (Pt. 2) 56, 67–68):

> * * * That the provisions of the law requiring withholding at the source of the tax due on profits or incomes of resident taxable persons be repealed and instead there be substituted "information at the source," where the amount of income received in any taxable year and paid over to the taxable person exceeds $800 for any taxable year. * * * The proposed amendment is conducive to a more effective administration of the law in that it will enable the Government to locate more effectively all individuals subject to the income tax and to determine more accurately their tax liability. This is of prime importance from a viewpoint of collections. * * *
>
> It is the Treasury Department's judgment, based upon close observation and study of the practical workings of the withholding feature of the income-tax law as well as of the general requirements of administration, that information at the source is a foundation upon which the administrative structure must be built if the income-tax law is to be rendered most effective and if due regard is to be paid to economy and simplicity of administration and to the imposition of no greater burden and expense upon taxpayers than is necessary for effective administration.

Adopting this recommendation and creating the requirement which now appears in Section 147 (a) of the Code, Congress inaugurated an administrative scheme in which it is essential, if the statutory purpose is to be served, that individual returns supply the information as to individual payees. As will become clearer below (pp. 24, 26), the "physical task of handling and verifying returns" (*Commissioner* v. *Lane-Wells Co.*, 321 U. S. 219, 223) of the type involved here plainly and imperatively demands such separation. We submit, therefore, that if there were nothing more than the bare statutory language, speaking in terms of "a return" for each "recipient" of payments, there would be ample reason for concluding that the language means what it says. But there is, in addition, over 35 years of administrative practice—ratified and adopted by Congress in closely related provisions of the income-tax laws—which makes clear beyond doubt the propriety of this conclusion.

2. Implementing the provision of the Revenue Act of 1917 which is now Section 147 (a) of the Code, the Commissioner of Internal Revenue, on January 2, 1918, promulgated Article 34 of Treasury Regulations 33. This Article required the filing of information returns, on Forms 1099, setting forth the amount of reportable gains, profits and income and the names and addresses of the recipients of such income. It went on to direct that these returns should be "accompanied

by a letter of transmittal, under oath (Form 1096), *which will show the number of returns filed* and the aggregate amount represented by the payments." (Emphasis added.)

Today, continuously unchanged in any presently material respect—prescribing even the same form numbers for forms which are substantially unaltered[6]—Treasury Regulations 111, Section 29.147–1, as amended by T. D. 5687, 1949–1 Cum. Bull. 9, promulgated under Section 147 (a) of the Code,[7] provides:

> * * * All persons making payment to *another person* of fixed or determinable income * * * of $600 or more * * * must render *a return* thereof * * *. *A return shall be made in each case on Form 1099,* accompanied by transmittal Form 1096 showing *the number of returns filed* * * *. The street and number where the recipient of the payment lives should be stated * * *. [Emphasis added.]

These regulations leave no room to question that a separate return is required (on Form 1099) for each individual payee. Indeed, it is clear from the regulations and the forms they prescribe that unless the individual Form 1099 is the return re-

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[6] Compare, for example, the Forms 1099 for 1918 and 1950, both reproduced in Appendix B, *infra*, pp. 45 and 46.

[7] In addition to the specific authority contained in Section 147 (a), the Commissioner has general power to prescribe all needful regulations under Section 62 of the Internal Revenue Code.

quired by Section 147 (a) of the Code, no form of return is anywhere provided on which to supply the information Congress demanded.

Section 147 (a) directs the payor required to make a return to supply the name and address of the recipient and the amount of the payments the latter has received. Precisely this information is called for by individual Form 1099 (Appendix B, *infra*, p. 45). See *McDonough* v. *Lambert*, 94 F. 2d 838, 841 (C. A. 1) (the information required is to be "given on form 1099 provided by the Treasury Department and in compliance with section 147 (a)"). And it is called for nowhere else. The transmittal form, 1096 (Appendix B, *infra*, p. 47), employed to show "the number of returns filed", supplies this information and nothing more. It does not give the name and address of any individual recipient or the amounts paid each. It bears no resemblance to the kind of "return" required by Section 147 (a) of the Code.

If it required a precedent, the fact that the nature of a "return" is to be defined in terms of the purpose and information it is to supply would be amply demonstrated by this Court's decision in *Florsheim Bros. Co.* v. *United States*, 280 U. S. 453. There, rejecting a contention that a so-called "tentative return," prescribed for a special occasion by the Commissioner, should be viewed as the ordinary completed return for the purpose

of starting the period of limitation against an additional assessment, this Court made clear that "the return required to satisfy the statute" (p. 460) is nothing more or less than a presentation of the data the statute seeks. This single possible definition of what constitutes a return points unmistakably in the present case to the individual information return on Treasury Form 1099.

The problem would be superficially simpler, perhaps, if the Treasury had prescribed no form other than the individual Form 1099. The Treasury could merely have designed this single form and could have omitted the requirement that the individual returns be submitted together, summarized as to number, and certified on a single transmittal form. It would then be clear beyond any question that a person failing to file a Form 1099 in circumstances calling for such filing would be guilty of the offense of failing to "make a return" which was "required by law or regulations made under authority thereof * * *." Section 145 (a), Internal Revenue Code, Appendix A, *infra*, p. 41. But the situation is in no way altered, we think, by the fact that obvious considerations of efficiency and thoroughness have led to the requirement that all returns on Forms 1099 be forwarded together, attached to a single transmittal form. The decisive point remains that each Form 1099 is a return—and the only suffi-

cient return—required by Section 147 (a) of the Code.[8]

The individual role of each Form 1099—the fact that each form serves the separate purpose of supplying information as to the individual payee—is clearly illustrated by the use to which these forms are put by the Bureau of Internal Revenue. Upon receipt at the central Processing Branch, Kansas City, Missouri, the individual Forms 1099 are alphabetized by collection districts and then forwarded to the appropriate collector's office on or before June 30 of the year following the year to which they apply. In the collector's office, these returns are associated with and checked against the tax returns of payee-taxpayers. In addition, they are employed as a means of discovering cases where tax returns should be, but have not been, filed. They serve, in short, as they were obviously intended to serve, as a means of unearthing delinquent taxes and taxpayers.[9]

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[8] This does not suggest, of course, that the transmittal form, 1096, which is also denominated a "return," could be deemed to be unauthorized. Given the general power to prescribe necessary regulations (Section 62 of the Code) and the plain utility and propriety of employing a transmittal form with which to forward all returns, Form 1096 is, we think, a clearly authorized requirement. Cf. *Commissioner* v. *Lane-Wells Co.*, 321 U. S. 219.

[9] Some indication of the importance of these information returns may be gleaned from the number filed during the years involved in the present prosecution:

	Forms 1096	Forms 1099
1948	235,866	12,279,378
1949	238,696	13,831,632
1950	245,825	15,251,043

To this end, each Form 1099, relating to each individual payee, is of separate, independent significance. Each failure to file such a form serves as a defeat, complete in itself, of the objective sought by Section 147 (a) of the Code as implemented by the Treasury's regulations.

3. Beginning with their contemporaneous adoption over 35 years ago following enactment of the predecessor of Section 147 (a), the administrative regulations and practice we have described, requiring a separate information return for each payee, have remained in force with no change which is significant here. During the same period, repeated reenactments of the statute have continued, without the slightest material variation, the language upon which the Treasury's uniform regulations have been based. These circumstances, particularly in view of the obvious literal justification in the statute for the administrative regulations, afford clear warrant for applying the settled rule that "Treasury regulations and interpretations long continued without substantial change, applying to unamended or substantially reenacted statutes, are deemed to have received congressional approval and have the effect of law." *Helvering* v. *Winmill*, 305 U. S. 79, 83. See also *Commissioner* v. *Munter*, 331 U. S. 210, 215; *Crane* v. *Commissioner*, 331 U. S. 1, 8; *Commissioner* v. *Flowers*, 326 U. S. 465, 469; *Bochm* v. *Commissioner*, 326 U. S. 287, 291–292; *Douglas* v. *Commissioner*, 322 U. S. 275, 281.

But Congress has done more than thus evidencing its tacit approval of the regulations by reenactments of the statute. To begin with, these reenactments themselves contain some affirmative demonstration of Congress' continuing awareness that the returns in question were designed to provide a check upon individual recipients of income. Each time there has been a change in the minimum amount of income required for the filing of an income tax return, Congress has correspondingly changed the minimum amount of payments to an individual recipient for which an information return is required.[10]

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[10] When the provision for information at the source was first enacted in 1917, it provided for returns as to each person to whom payments had been made in excess of $800. At that time, the minimum requirement for filing an individual income tax return was $3,000. However, in the Revenue Act of 1918 the two amounts were both changed to $1,000, and this conformity has been maintained in all subsequent amendments. Compare Sections 8 and 28 (added by War Revenue Act of 1917), Revenue Act of 1916, 39 Stat. 761, 40 Stat. 337; Sections 223 and 256, Revenue Act of 1918, 40 Stat. 1074, 1086; Sections 223 (a) and 256, Revenue Act of 1926, 44 Stat. 37, 50; Sections 51 (a) and 148 (a), Revenue Act of 1928, 45 Stat. 807, 836; Sections 51 (a) and 147 (a), Revenue Act of 1932, 47 Stat. 188, 218; Sections 51 (a) and 147 (a), Revenue Act of 1938, 52 Stat. 476, 515; Sections 51 (a) and 147 (a), Internal Revenue Code, 53 Stat. 27, 64; Sections 7 (a) and 7 (c), Revenue Act of 1940, 54 Stat. 519, 520; Sections 112 (a) and 112 (c), Revenue Act of 1941, 55 Stat. 696, 697; Sections 214 (c) (1) and 214 (c) (3), Revenue Act of 1942, 56 Stat. 828; Sections 202 (c) (1) and 202 (c) (3), Revenue Act of 1948, 62 Stat. 114.

Far more significantly, Congress has, in a related provision of the Internal Revenue Code, explicitly recognized and incorporated the requirement that a separate information return is required for each payee. Under the social security provisions of the Code (Sections 1400–1401) and the provisions for withholding of income taxes (Sections 1622–1623), employers are required to deduct taxes from the wages of their employees. Section 1633 (a) of the Code (added by Section 206 (a) of the Social Security Act Amendments of 1950, c. 809, 64 Stat. 477, 537) provides that any employer required to deduct and withhold such taxes from an employee "shall furnish to *each* such employee * * * a written statement", showing the name of the employer, the name of the employee, the amount of wages paid, and the amount of tax withheld. This, with the addition of the withholding tax, is the same information as that required to be furnished on Form 1099 under Section 147 (a). Congress, therefore, went on in Section 1633 (b) to provide that:

> A duplicate of any such statement if made and filed in accordance with regulations prescribed by the Commissioner with the approval of the Secretary shall constitute *the return required* to be made in respect of such remuneration *under section 147*. [Emphasis added.]

Here, we submit, is striking affirmation of the view Congress has evidenced by repeated reenactments of the statute—the view that *the return* required by Section 147 (*a*) is a return of information as to the individual payee.[11]

Recognizing the separate, individual character of each withholding statement furnished by an employer *to an employee*—the duplicate of which serves as the return under Section 147 (a)—Congress has provided in Section 1626 (*a*) of the Code that "any person required * * * to furnish [such] a statement [to an employee] * * * who willfully fails to furnish a statement in the manner, at the time, and showing the information required * * *, shall *for each such failure*, upon conviction thereof be fined not more than $1,000, or imprisoned for not more than one year, or both." [Emphasis added.][12] It would be at least somewhat anomalous if there were no comparable sanction against failure to supply *the Government* with the individual reports of information contained in these

[11] Adapting its established practice for information returns under Section 147 (a) to the case of employees whose taxes are withheld and for whom withholding statements are filed, the Treasury requires that copies of the individual withholding statements (Form W–2a), substituting for the individual returns on Form 1099, be transmitted, together with a "reconciliation form" (W–3) which lists the number of statements forwarded and the total of taxes withheld—an obvious counterpart of the Form 1096 required under Section 147 (a). Treasury Regulations 116, Section 405.601.

[12] Section 1626 (*b*) imposes, in addition, "for each such failure * * * a civil penalty of not more than $50."

statements. But Congress made it clear, we think, that the penal provisions of Section 145 provided comparable, and more severe, punishments for "each * * * failure" to transmit a withholding statement—functioning as a "return" under Section 147 (a)—to the Government.

The penalty in Section 1626 (a) of the Code for failing to furnish an employee with a withholding statement (enacted by Section 2 (a) of the Current Tax Payment Act of 1943, c. 120, 57 Stat. 126, 137) is a substantial duplicate of the provision enacted by Section 172 of the Revenue Act of 1942, which imposed a "victory tax" and created a system of withholding and receipts.[13] H. Rep. No. 401, 78th Cong., 1st Sess., p. 32; S. Rep. No. 221, 78th Cong., 1st Sess., p. 30. Reporting the 1942 provision, both the House and Senate Committees said (H. Rep. No. 2333, 77th Cong., 2d Sess., p. 132; S. Rep. No. 1631, 77th Cong., 2d Sess., p. 172):[14]

> Section 470 provides criminal and civil penalties for the willful failure of any em-

[13] Section 172 of the Revenue Act of 1942 (c. 619, 56 Stat. 798, 884) added to the Internal Revenue Code "Subchapter D—Victory Tax on Individuals," consisting of Code Sections 450–456, 465–470, 475, and 476. The penalty provision to which we refer was contained in added Section 470 (a) of the Code. The Victory Tax subchapter was repealed by Section 6 of the Individual Income Tax Act of 1944, c. 210, 58 Stat. 231, 234.

[14] Our quotation is from the Senate Report, the language of which differed in only one or two trivial respects from that of the House.

> ployer to furnish a receipt to the employee showing the information required * * *. The criminal penalty is a fine of not more than $1,000 or imprisonment for not more than 1 year, or both * * *. *These penalties are prescribed in lieu of the penalty imposed by section 145 of the Code, and are much less severe than those displaced.* [Emphasis added.] [15]

This history adds strikingly to the already clear reasons for treating each information return as a separate requirement and each failure to file such a return as a separate offense. Punishable by a penalty "prescribed in lieu of the penalty imposed by section 145 of the Code," the willful failure to supply an individual employee with a withholding statement is clearly a completed offense. A copy of this statement is, as to the Government, a "return" required by Section 147 (a). The penalty provisions of Section 145 (a) would probably have been inapplicable for failure to furnish statements required to be furnished to employees, and were appropriately "displaced" as to such statements by the special

[15] While the criminal penalty to which the Committees referred is not "much less severe" for *failure* to supply a statement (Section 145 (a) provides for a maximum of one year's imprisonment, a *$10,000* fine, or both), this is certainly so with respect to false statements, for false returns were expressly made punishable as perjury under Section 145 (c) of the Code (bearing a penalty of a maximum imprisonment of five years and a $2,000 fine) at the time of the legislation considered here.

provisions now found in Section 1626 (a) of the Code.[16] But Section 145 (a) relates precisely to "returns" and is clearly at the center of the scheme of punishment to which Section 1626 (a) is a specific addition. Like the provisions to which it corresponds for a willful failure to supply a statement to an individual employee, Section 145 (a) punishes each failure to supply the Government with the corresponding information return.

4. We think the preceding discussion lays bare the error of the District Court. Section 145 (a) of the Internal Revenue Code (Appendix B, *infra*, p. 41) punishes

> Any person required * * * to make a return * * * who willfully fails to * * * make such return * * *.

It can scarcely be doubted—and the decision below suggests no doubt—that any willful failure to file any single return constitutes the offense denounced by Section 145 (a). The District Court held, however (R. 66–67), that only one annual return is required under Section 147 (a); that Form 1099 is not that return; and that a willful default with regard to Form 1099 is not a misdemeanor. But this conclusion is refuted by the statutory language, the regulations, and the history reviewed above.

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[16] In decreasing the severity of the latter penalty, Congress may well have been of the view that a somewhat lighter punishment should apply where the willful default was against an employee rather than against the Government.

The test of the allowable unit of prosecution under any penal statute has been stated in *Blockburger* v. *United States,* 284 U. S. 299, 302, where, adopting Wharton's definition, this Court said:

> * * * The test is whether the individual acts are prohibited, or the course of action which they constitute. If the former, then each act is punishable separately * * *. If the latter, there can be but one penalty.

Thus, in *In re Snow,* 120 U. S. 274, where the statute merely penalized cohabitation with more than one woman, this Court held that there could be only one offense where there was continuous cohabitation for nearly three years with the same seven participants. The statute did not specify any less continuous act, any definite number of women, or any definite period of time.

On the other hand, under a statute making it unlawful to "sell" narcotics, two sales by the same seller to the same buyer were held to constitute two separate offenses, though one closely followed the other in time. *Blockburger* v. *United States,* 284 U. S. 299. Similarly, in *Ebeling* v. *Morgan,* 237 U. S. 625, it was held that under a statute punishing a person who shall cut "any mail bag," the cutting of six mail bags at the same time constituted six separate offenses. This Court said (p. 629):

> [The statutory] words plainly indicate that it was the intention of the lawmakers to protect each and every mail bag from

> felonious injury and mutilation. Whenever any one mail bag is thus torn, cut or injured, the offense is complete. * * * The offense as to each separate bag was complete when that bag was cut, irrespective of any attack upon, or mutilation of, any other bag.[17]

See also *United States ex rel. Marcus* v. *Hess*, 317 U. S. 537, 552; *Korematsu* v. *United States*, 323 U. S. 214, 222.

And so here, the words of Section 145 (a) "plainly indicate that it was the intention of the lawmakers" to punish "each and every" failure to file any single return required by law or appropriate regulations. Cf. *Beam* v. *Hamilton*, 289 Fed. 9 (C. A. 6). It follows necessarily, therefore, that since each individual Form 1099 is a separate information "return" required by Section 147 (a) of the Code and the Treasury's appropriate regulations thereunder, each failure to file such a return violates Section 145 (a).

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[17] In the same way, under the mail fraud statute, punishing one who, in furtherance of a scheme to defraud, places "any letter or packet in any post office," each mailing is a separate crime although in furtherance of the same scheme. *Badders* v. *United States*, 240 U. S. 391, 394; *In re De Barq*, 179 U. S. 316, 320; *In re Henry*, 123 U. S. 372, 374. And falsifications of record entries have repeatedly been held to constitute separate offenses to the extent of the number of transactions falsified. *Berg* v. *United States*, 176 F. 2d 122, 125–126 (C. A. 9), certiorari denied, 338 U. S. 876; *Bower* v. *United States*, 296 Fed. 694, 695–696 (C. A. 9), certiorari denied, 266 U. S. 601; *United States* v. *Berry*, 96 Fed. 842, 844 (W. D. Va.).

There is nothing new or startling, of course, in the requirement of more than one annual return from any individual. To cite only one example, anyone acting as a fiduciary or trustee must, in addition to his own individual return, file separate returns for each of the trusts which he administers. 26 U. S. C. 142. This, obviously, may entail the filing of dozens or hundreds of separate returns by individuals or corporations whose business it is to act as fiduciaries. Moreover, the requirement of more than one separate return may properly be imposed under the broad power to prescribe administrative regulations where such a requirement furthers the purpose of obtaining tax information "with such uniformity, completeness, and arrangement that the physical task of handling and verifying returns may be readily accomplished." *Commissioner* v. *Lane-Wells Co.*, 321 U. S. 219, 223. In the present case, the requirement is found in the statute itself—and the regulations making the requirement unmistakable are clearly necessary to render feasible the task of checking and verification for which individual information returns are designed.

It was for Congress to determine whether a separate information return should or could be required for each payee. Since Congress has so provided, 101 willfully neglected information returns—like 101 cut mail bags or 101 unlawful sales or 101 unlawfully mailed letters—constitute 101

offenses. If it seems harsh that each willful failure to file a return is a crime, "the remedy must be afforded by act of Congress, not by judicial legislation under the guise of construction." *Blockburger* v. *United States*, 284 U. S. 299, 305. But it should be observed, even on the level of legislative judgment, that 101 willful nondisclosures of the information Congress demanded as to individual payees are in fact a multiplication of the kind of evil Section 145 (a) of the Internal Revenue Code was designed to prevent. It does not follow, of course, that the multiplier—applying to a single one of the many factors affecting the imposition of criminal punishment—should or will be adapted mechanically to the delicate, discretionary task of adjudging the penalty to which the appellee should be subjected if he is guilty. Such a consideration, which may well underlie what is, in our view, the District Judge's untenable conclusion, may properly be brought to bear in passing sentence. However this may be, we think the relevant statutes leave no ground for avoiding the problem by holding that Form 1099 is not a return at all. But this untenable premise is the only way of avoiding the conclusion, which is decisive in this case, that 101 such forms are 101 returns.

We submit, finally, that the recent decision in *United States* v. *Universal C. I. T. Corp.*, 344 U. S. 218, in no way detracts from the correct-

ness of our position here. That case affirms the teaching that the problem of ascertaining "[w]hat Congress has made the allowable unit of prosecution" requires analysis of the necessarily "unique" legislative materials applicable in each particular case (p. 221). There, construing a criminal enforcement provision which simply made it unlawful "to violate any of the provisions of" stated sections of the Fair Labor Standards Act, this Court found in the "history of this legislation and the inexplicitness of its language" (p. 224)—and in the nature of the duties and the alternative methods of enforcement the Act prescribed—a congressional purpose to punish a "course of conduct" (*ibid.*) rather than an "employer's failure to perform his obligations as to each employee * * *" (p. 222). The Court pointed out that, had Congress intended the latter, "it could easily have said so" (*ibid.*).

Here, we believe, what Congress said and the regulations it has ratified and woven into the fabric of related enactments preclude treatment of failures to file 101 returns as a single criminal "course of conduct."

CONCLUSION

For the reasons stated above, it is submitted that the judgment dismissing the indictment in this case should be reversed.

Respectfully submitted.

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FEBRUARY 1953.

APPENDIX A

18 U. S. C.:

Sec. 3731. [As amended by the Act of May 24, 1949, c. 139, 63 Stat. 89, Sec. 58].

APPEAL BY UNITED STATES

An appeal may be taken by and on behalf of the United States from the district courts direct to the Supreme Court of the United States in all criminal cases in the following instances:

From a decision or judgment setting aside, or dismissing, any indictment or information, or any count thereof, where such decision or judgment is based upon the invalidity or construction of the statute upon which the indictment or information is founded.

* * * * *

Internal Revenue Code:

SEC. 54. RECORDS AND SPECIAL RETURNS.

(a) *By Taxpayer.*—Every person liable to any tax imposed by this chapter or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

* * * * *

SEC. 62. RULES AND REGULATIONS.

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter.

SEC. 145 [as amended by SEC. 5 (c), Current Tax Payment Act of 1943, c. 120, 57 Stat. 126]. PENALTIES.

(a) *Failure to File Returns, Submit Information, or Pay Tax.*—Any person required under this chapter to pay any estimated tax or tax, or required by law or regulations made under authority thereof to make a return or declaration, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any estimated tax or tax imposed by this chapter, who willfully fails to pay such estimated tax or tax, make such return or declaration, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000.00 or imprisoned for not more than one year, or both, together with the costs of prosecution.

* * * * * *

SEC. 147 [as amended by Sec. 202 (c) (3), Revenue Act of 1948, c. 168, 62 Stat. 110]. INFORMATION AT SOURCE.

(a) *Payments of $600 or more.*—All persons, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, and employers, making payment to another person, of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments described in section 148 (a) or 149) of $600 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the

United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Commissioner, under such regulations and in such form and manner and to such extent as may be prescribed by him with the approval of the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

* * * * *

Treasury Regulations 111, promulgated under the Internal Revenue Code:

SEC. 29.147–1 [As amended by T. D. 5313, 1944 Cum. Bull. 308 and T.D. 5687, 1949–1 Cum. Bull. 9] RETURN OF INFORMATION AS TO PAYMENTS OF $600 ($500 FOR YEARS PRIOR TO 1948).

All persons making payment to another person of fixed or determinable income of $500 or more in any calendar year prior to 1948, and all persons making payment to another person of such income of $600 or more in any calendar year after 1947 must render a return thereof for such year on or before February 15 of the following year except as specified in sections 29.147–3 to 29.147–5, inclusive. A return shall be made in each case on Form 1099, accompanied by transmittal Form 1096 showing the number of returns filed, except that the return with respect to distributions to beneficiaries of a trust or of an estate shall be made on Form 1041 in lieu of Forms 1099 and 1096. Returns of information on Forms 1096, 1099, and 1099L should be filed with the Commissioner of Internal Revenue, Processing Division, C. C. Station,

Kansas City 2, Mo.[1] For place of filing Form 1041 see section 53. The street and number where the recipient of the payment lives should be stated, if possible. If no present address is available, the last known post-office address must be given. Although to make necessary a return of information the income must be fixed or determinable, it need not be annual or periodical. (See section 29.143–2.)

Sums paid in respect of life insurance, endowment, or annuity contracts which are required to be included in gross income under sections 29.22 (b) (1)–1, 29.22 (b) (2)–1, and 29.22 (b) (2)–2 come within the meaning of the term "fixed or determinable income" and are required to be reported in returns of information as required by this section, except that payments in respect of policies surrendered before maturity and lapsed policies need not be reported.

Fees for professional services paid to attorneys, physicians, and members of other professions come within the meaning of the term "fixed or determinable income" and are required to be reported in returns of information as required by this section.

For the purposes of a return of information, an amount is deemed to have been paid when it is credited or set apart to the taxpayer without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and which is made available

[1] Prior to the amendment which was published in the Federal Register on February 24, 1949 (T. D. 5687, 1949–1 Cum. Bull. 9, 32), the address of the Processing Division given in the regulation was "260 East One Hundred and Sixty-first Street, New York 51, N. Y."

to him so that it may be drawn at any time, and its receipt brought within his own control and disposition.[2]

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[2] The regulation was further amended in 1951 (T. D. 5859, 1951–2 Cum. Bull. 88), but the amendment has no bearing on the present case.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 442

THE UNITED STATES OF AMERICA,
Appellant,

vs.

JAMES J. CARROLL

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MISSOURI

STATEMENT OPPOSING JURISDICTION

MORRIS A. SHENKER,
Counsel for Appellee.

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Form 1099
U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

UNITED STATES INFORMATION RETURN FOR CALENDAR YEAR 1950

INSTRUCTIONS TO PAYORS

Prepare one of these forms for each payee in accordance with the instructions on return Form 1096. **THIS FORM IS NOT REQUIRED WITH RESPECT TO WAGE PAYMENTS REPORTED ON FORM W-2a.**

Forward with return Form 1096 so as to reach the Commissioner of Internal Revenue, in care of Processing Division, C. C. Station, Kansas City 2, Missouri, on or before February 15, 1951.

Copy of this form as filed with the Government should be furnished to the employee whose income is reported in first column to assist him in preparing his income tax return.

(45)

TO WHOM PAID

1950

(Print full name and home address) (Show employee's social security number, if any. If employee is a married woman, name of husband should also be furnished)

KIND AND AMOUNT OF INCOME PAID

Salaries, Fees, Commissions, or Other Compensation. Do *not* include amount reported on Form W-2a	Interest on Notes, Mortgages, Etc.	Rents and Royalties	Annuities, Pensions, Alimony, and Other Fixed or Determinable Income	Foreign Items ($600 or more)	Dividends ($100 or more) (Total paid, including amounts claimed nontaxable)
	($600 or more aggregate amount of above items)				
$	$	$	$	$	$

16—62580-1

BY WHOM PAID
(Name and address)

(OVER)

APPENDIX 'B'

INTERNAL REVENUE SERVICE FORM 1099 FOR THE YEAR 1950

Form 1099
UNITED STATES
INTERNAL REVENUE
(Revised Feb., 1919)

REPORT OF INCOME OF $1,000 OR MORE PAID DURING THE CALENDAR YEAR 1918

SALARIES, WAGES, RENT, INTEREST, OR OTHER FIXED OR DETERMINABLE GAINS, PROFITS, AND INCOME

NAMES MUST BE PRINTED OR WRITTEN PLAINLY

BY WHOM PAID

NAME _____

ADDRESS _____

_____

INSTRUCTIONS

One of these forms must be filled in for each person to whom income, as described on this form, was paid during the calendar year 1918. The name and business address of the person or organization making the payments should be entered under the heading "By whom paid" and the name and home address (if an individual) or business address (if an organization) of the one to whom the income was paid should be entered under the heading "To whom paid."

These forms must be forwarded with return Form 1096 to the Commissioner of Internal Revenue, Sorting Division, Washington, D. C., on or before March 15, 1919.

Do not report on this form dividends on stock, interest on bonds of domestic or foreign corporations, or interest on bonds and other obligations of the United States or foreign countries. For further instructions see Form 1096.

TO WHOM PAID

NAME _____

ADDRESS _____
(Street and number or rural route)

_____
(Post Office and State)

If payee is an individual, is he married? _____ If not, is he head of a family? _____

KIND OF INCOME PAID	AMOUNT
Salaries, wages, fees, commissions, etc.	$
Rent	$
Interest on notes, mortgages, etc.	$
Premiums and annuities	$
_____	$

On the blank line above enter the kind and amount of any other fixed or determinable gains, profits, and income except as noted in instructions.

c2—8573

INTERNAL REVENUE SERVICE FORM 1099 FOR THE YEAR 1918

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FORM 1096
U. S. Treasury Department
Internal Revenue Service

UNITED STATES ANNUAL INFORMATION RETURN 1950

SUMMARY OF REPORTS OF SALARIES OF $600 OR MORE, OTHER INCOME PAYMENTS OF $600 OR MORE, DIVIDEND PAYMENTS OF $100 OR MORE, AND DISTRIBUTIONS IN LIQUIDATION OF $600 OR MORE

(Name of payor of income)

(Date received)

(Street and number or rural route)

(City or town, postal zone number) (State)

INSTRUCTIONS

1. When and Where to File.—This return (Form 1096) must be used to summarize and transmit copies of Forms 1099 and 1099L, in accordance with the instructions hereon, and delivered together with such forms on or before February 15, 1951, to the Commissioner of Internal Revenue, in care of Processing Division, C. C. Station, Kansas City 2, Missouri.

2. General Rules for Form 1099.—Except as specified in Instruction 3, a separate information return on Form 1099 must be made by every individual, partnership, and corporation with respect to each individual to whom payments were made during the calendar year 1950 in the following amounts:

a. Salaries, wages, fees, commissions, and other compensation for personal services totaling $600 or more, to the extent not reported on Form W-2a or Form 1042. (See definition of compensation in paragraph 4, below.)

b. Interest, rent, premiums, annuities, royalties, or other fixed or determinable income totaling $600 or more.

c. Dividends (other than distributions in liquidation) totaling $100 or more.

3. Exclusions from Form 1099.—No report on Form 1099 is required in the following cases: (*a*) Wages reported on Form W-2a; (*b*) payments of any type to a corporation; (*c*) payments to a nonresident alien reported on Form 1042; (*d*) distributions or salaries to members of a partnership reported on Form 1065; (*e*) distributions to beneficiaries of trusts or estates reported on Form 1041; (*f*) rent paid by a tenant to a real estate agent; (*g*) payments made by a broker to his customers; and (*h*) interest on tax-free covenant bonds reported on Form 1012.

4. Compensation Defined.—Compensation for personal services to be reported on Form 1099 includes not only wages and salaries in the ordinary meaning of the terms but also other items such as (*a*) the value of living quarters or meals furnished in lieu of cash compensation for personal services, (*b*) traveling or other expense allowances for which the employee is not required to submit an itemized account showing that such allowances were ordinary and necessary expenses in the employer's business, and (*c*) insurance premiums which under section 29.165-6 of Regulations 111 are income to the employee for the year in which the insurance is purchased. Such items should be separately identified on Form 1099.

5. Effect of Form W-2a.—Where the aggregate compensation of an employee is $600 or more and a portion thereof is reported on Form W-2a, the remainder of the compensation must be reported on Form 1099, regardless of amount. For example, if the total compensation paid to an employee is $600 of which $400 is reported on Form W-2a, the remaining $200 must be reported on Form 1099.

6. Annuity Payments to be Reported.—Annuity payments shall be reported in an amount equal to 3 percent of the aggregate premiums or consideration paid for the annuity (whether or not paid during the taxable year) until the aggregate amount paid to, and not required to be included in the gross income of, the annuitant equals the aggregate premiums or consideration paid for such annuity; thereafter, the entire amount of the annuity payments shall be reported.

7. Foreign Items.—In the case of foreign items, i. e., interest upon the bonds of a foreign country or of a nonresident foreign corporation not having a fiscal or paying agent in the United States, or dividends upon the stock of such corporation, a report on Form 1099 shall be filed by the bank or collecting agent accepting the items for collection, if the amount paid to an individual (citizen or resident of the United States), a resident fiduciary, or a resident partnership any member of which is a citizen or resident, during the calendar year 1950 is $600 or more.

8. Nontaxable Distributions.—The reverse of this form should be used to explain dividend distributions made in the ordinary course of business (but not distributions in liquidation) which are considered by a corporation to be nontaxable or partly nontaxable to the shareholders. Such report should be filed not later than February 1, 1951.

9. Form 1099L—Distributions in Liquidation.—Every corporation making any distribution in liquidation of the whole or any part of its capital stock shall make a report on Form 1099L with respect to each shareholder to whom such distribution amounting to $600 or more was made during the calendar year 1950, unless such distribution is one with respect to which information is required to be filed pursuant to section 112(b)(6), 112(g), or 371 of the Internal Revenue Code and the regulations issued thereunder. A copy of the resolution of the board of directors authorizing payments in liquidation should be attached hereto.

10. Calendar Year Basis.—Reports on Forms 1099 and 1099L are required to be rendered on the basis of the calendar year even though the income tax return of the payor is filed on the basis of a fiscal year.

11. Verification.—Returns of individuals must be signed by the individual or his duly authorized agent. Returns of corporations, partnerships, etc., must be signed by an officer of the corporation or member of the partnership.

I hereby declare under the penalties of perjury that to the best of my knowledge and belief the accompanying reports on Form 1099 and Form 1099L, and/or the statements on the reverse of this form, including any accompanying schedules, constitute a true and complete return of payments of the above-described classes of income made by the person or organization named above during the calendar year 1950.

Number of reports on Form 1099 attached .....

Number of reports on Form 1099L attached .....

.....
(Signature)

.....
(Title)

INTERNAL REVENUE SERVICE FORM 1096

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

Criminal No. 18188

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

vs.

JAMES J. CARROLL,

Defendant-Appellee.

STATEMENT IN OPPOSITION TO APPELLANT'S STATEMENT OF JURISDICTION

The appellee in the above-entitled cause for his argument in opposition to appellant's statement as to jurisdiction herein as to the first 45 counts of the Indictment respectfully shows the following:

Two Indictments were returned against the defendant in the United States District Court for the Western District of Missouri. The Indictment in the instant cause, Cause No. 18188, consisted of 101 counts. Counts 1 through 45 concerned alleged violations in the year 1948 and the remaining counts concerned alleged violations in the years 1949 and 1950.

The Indictment charged the defendant with willful failure to make a return covering total payments (which exceeded the sum of $600.00 in each instant) allegedly made to certain

named recipients during the calendar years 1948, 1949 and 1950, which payments to these recipients together with their names and addresses were required to be reported on United States Treasury Department Internal Revenue Service Form 1099 to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City, Missouri, on or before the 15th day of February following the year in which the payments were made.

The language employed in each Count of the instant Indictment was practically identical except as to variations in the amount of payment, the year in which the payments were made, the name and address of the recipient thereof, and the date for the reporting of same. The first Count of the instant Indictment is representative of the other Counts and provided as follows:

"COUNT 1

'That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Carl Abbott, 416 West Morgan, Sedalia, Missouri, of the sum of $7,536.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U. S. C. Section 145(a)''.

The second Indictment, Cause No. 18189, was in three counts and charged the defendant with willful failure to make a return on United States Treasury Department Internal Revenue Service Form 1096, reporting the total number of returns on Form 1099 attached thereto for each of the years 1948, 1949 and 1950, and that these Forms 1096 together with the accompanying Forms 1099 were required to be filed with the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City, Missouri, on or before the 15th day of February following the year in which these payments were made. The recipients named in this Indictment were the same individuals set out in the first Indictment.

The language employed in the second Indictment was practically identical in each Count except as to the variations in the amounts of payments (which always exceeded the amount of $600.00 to each recipient), the year in which these payments were made, the name and address of the recipients thereof and the required date for reporting the information. The first Count of this Indictment is representative of this group and provides as follows:

"COUNT I

'That during the calendar year 1948, JAMES J. CARROLL, who was resident of the City of St. Louis, State of Missouri, made the following payments to the following persons:

_____

and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1096, to the Commis-

sioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the number of returns on Form 1099 attached thereto; that, well knowing the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return, Form 1096, to the said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U. S. C., Section 145(a).' "

We have omitted from the above quoted count the specific listing of recipients, their respective addresses and the total alleged payments made to them.

Thus, under both Indictments the defendant was charged with alleged violations in the calendar years 1948, 1949 and 1950. The defendant, as to each Indictment, filed a motion to dismiss which alleged in part that the Court had no jurisdiction over the person or subject matter for any alleged offense in the year 1948, and also that the Indictment did not allege sufficient facts to constitute an offense. The Court dismissed the first Indictment and the first count of the second Indictment following a consolidated hearing on defendant's motions to dismiss.

The Court interpreted Section 147 of Title 26 to require a return and not a group of returns to be filed, and said that Form 1096 is the Form required by the Statute. The Court stated that Forms 1099 are a part of Form 1096 and are not separate and distinct returns and, therefore, the information on Form 1099 is therefore part of Form 1096. The Courts also said that an individual might be indicted for making a false return if he did not list the correct number of Forms 1099 on the Form 1096. Therefore, he held that there could be only one Indictment for each year for failing to file Forms 1099 and 1096. The Court thereupon dismissed the instant Indictment in its entirety.

The Court then took up the second Indictment and dismissed the first count of that Indictment dealing with the year 1948, for the reason that the Internal Revenue Regulations required information returns to be filed with the Processing Division in New York City rather than the Processing Division in Kansas City, Missouri. A Regulation concerning the place where the information forms were to be filed was approved on February 16, 1949, under T. D. 5687, 1949-1 C. B. 9, and amended Regulation 111, Section 29.147-1, by changing the place where the informational returns were to be filed, from New York City, New York, to Kansas City, Missouri. The Court said that information forms for the year 1948 due before February 16, 1949, had to be filed in New York City, and therefore held that jurisdiction for the year 1948 was in New York, New York.

The jurisdiction of the Supreme Court to review on direct appeal an order of a District Court dismissing an Indictment based on construction of a statute is conferred by Section 3731 of Title 18, U. S. C. However, where the order of a District Court is not based solely upon the construction of the statute but has an additional and independent ground, the Supreme Court is not authorized to review the action.

The dismissal of the first forty-five counts of the Indictment dealing with alleged violations during the calendar year 1948 was based on the additional ground that the Court had no jurisdiction over the person of the defendant. The transcript of the oral opinion of the District Court leads to that conclusion. In its oral opinion the Court first dismissed the instant Indictment and then considered the second Indictment, Cause No. 18189. The Court dismissed the first count of the second Indictment dealing with alleged violations during the calendar year 1948, for the reason that it had no jurisdiction over alleged failure to file information forms for the year 1948 because Treasury Regulation

111, Section 29.147-1 changing the place of filing of those forms from New York to Kansas City was not effective until February 16, 1949. The Court apparently acted under Article 3, Section 2 of the Constitution and Rule 18 of the Federal Rules of Criminal Procedure.

A comparison of the Indictment makes it clear that the Court had reached the same conclusion as to its jurisdiction over the first forty-five counts of the instant Indictment. The dismissal of these counts is, therefore, based on the additional ground that the District Court had no jurisdiction over the person.

United States v. *Wayne Pump Co.*, 317 U. S. 200, and *United States* v. *Swift & Co.*, 318 U. S. 442, held that the Supreme Court does not have jurisdiction where there is an independent ground in addition to the construction of a statute for sustaining the dismissal of an Indictment.

It is, therefore, submitted that the Supreme Court does not have jurisdiction to review on direct appeal the first forty-five counts of this Indictment dealing with the year 1948.

Respectfully submitted,

MORRIS A. SHENKER,
Attorney for Defendant-Appellee,
408 Olive Street, St. Louis, Mo.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1952.

No. 442.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

JAMES J. CARROLL.

On Appeal from the United States District Court
for the Western District of Missouri.

BRIEF FOR THE APPELLEE.

MORRIS A. SHENKER,
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INDEX.

Citations.

Cases:

Statutes:

Miscellaneous:

IN THE

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THE UNITED STATES OF AMERICA,
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On Appeal from the United States District Court
for the Western District of Missouri.

BRIEF FOR THE APPELLEE.

OPINION BELOW.

The oral opinion of the District Court (R. 66) dismissing the indictment in the instant case, No. 18,188, has not been reported.

JURISDICTION.

The order of the United States District Court dismissing the indictment was entered on August 11, 1952 (R. 65, 76). A notice of appeal was filed by the United States to this Court on September 8, 1952 (R. 65, 77). The Government has taken its appeal in this cause under Criminal Appeals Act, 18 U. S. C. 3731, on the ground that the dismissal of the indictment was based on the construction of the statute on which the indictment was founded. On September 23, 1952, the appellee filed a statement opposing the jurisdiction of this Court as to the first 45 counts of the indictment (R. 77), on the ground that as to these counts the dismissal of the District Court was not based solely upon the construction of the federal statute, but was based on the additional ground that the District Court had no jurisdiction over the person of the defendant, for the reason that jurisdiction did not lie in the Western District of Missouri. Further consideration of this jurisdictional question was, on December 15, 1952, postponed by this Court to the hearing of the case on the merits (R. 78).

QUESTIONS PRESENTED.

1. Whether a person failing to file Internal Revenue Service Form 1099, showing payments made by him to another person of $600.00 or more in fixed or determinable income for a given taxable year, is subject to the criminal provisions of Section 145 (a) of the Internal Revenue Code, which section makes it an offense to wilfully fail to make a "return" for the purpose of the computation, assessment or collection of a tax at the time or times required by law or regulation.

2. Whether an individual may be prosecuted under Section 145 (a) of the Internal Revenue Code in a separate count for each omission to report a payment made by him

during a given taxable year to another of fixed or determinable income of $600.00 or more.

3. Assuming a "return" within the meaning of Section 145 (a) includes a "return" within the meaning of Section 147 (a) of the Code, does such a "return" in the "form and manner" prescribed by the Commissioner, consist of Form 1099 alone, or does it not consist of Forms 1099 together with verified* Form 1096?

STATUTES AND REGULATIONS INVOLVED.

The statutes and regulations which appellee deems pertinent to this appeal are set forth in the appendix to this brief, infra, pp. 41-45.

STATEMENT.

This cause originated by the filing in the District Court for the Western District of Missouri of two indictments against this defendant on December 14, 1951 (R. 1, 47). These indictments were numbered 18,188 and 18,189, respectively. The indictment in the instant cause, No. 18,188, consisted of 101 counts, charging the defendant (appellee) with wilful failure to make a return on Internal Revenue Service Form 1099 with regard to certain payments, which exceeded the sum of $600.00 in each instance, allegedly made by the defendant to certain named recipients during the calendar years 1948, 1949 and 1950. It was alleged in said indictment that the amounts of these payments together with the names and addresses of the recipients were required to be reported on said forms 1099 and mailed to the Commissioner of Internal Revenue, Processing Division, Kansas City, Missouri, on or before the 15th day of February following the year during which said payments were

* The term "verified" as used in this Brief with regard to Form 1096 refers to the execution of said form with a declaration under the penalties of perjury that it constitutes a true and complete document.

made. Counts 1 through 45 of the indictment concerned alleged violations in this regard by the defendant in the year 1948, and the remaining counts of this indictment concerned alleged violations by him in the years 1949 and 1950.

In the second indictment the defendant was charged in three counts with having wilfully failed to make a return on Internal Revenue Service Form 1096 for each of the three years, 1948, 1949 and 1950, and reporting thereon the total number of returns made by him on form 1099, attached thereto, for each of the three years in question. The indictment further charged that these forms 1096 together with the accompanying forms 1099 were required to be filed by the defendant with the Commissioner of Internal Revenue, Processing Division, Kansas City, Missouri, on or before the 15th day of February following the year in which these payments were allegedly made.

The recipients named in this second indictment, in the three counts thereof, were the same individuals whose names were set out in the 101 counts of the first indictment. The same 101 transactions which were charged in the first indictment were merely assembled by year and charged again in the three counts of the second indictment.

Each count of the first indictment (the one presently before this Court) (R. 1) alleged that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulation 111, Section 29.147-1, the defendant was required to "make a return" on Internal Revenue Service Form 1099, and that his alleged failure so to do violated the provisions of Section 145 (a) of the Internal Revenue Code. Each count of the second indictment (R. 47) alleged that under the same statute and Treasury Regulations the defendant was required to "make a return" on Internal Revenue Service Form 1096, and his failure so to do

similarly violated Section 145 (a) of the Internal Revenue Code.

On January 31, 1952, the defendant filed separate motions to dismiss each of the aforementioned indictments (R. 53, 58). These motions to dismiss asserted inter alia that each count of the two indictments did not allege sufficient facts to constitute an offense against the laws of the United States, and further that the Court had no jurisdiction over the person or subject matter for any alleged offense. Thereafter, on August 11, 1952, the defendant filed supplemental motions to dismiss the indictments (R. 63, 64) in which among other things it was alleged that the District Court of the Western District of Missouri had no jurisdiction over counts 1 through 45 of the first indictment and count 1 of the second indictment for the further reason that as to the year 1948 the Treasury Regulations provided that Internal Revenue Service Forms 1099 and 1096 should be filed with the Commissioner of Internal Revenue, Processing Division, New York City, New York.

The hearings on these motions to dismiss the two indictments were consolidated and heard by the Court on August 11, 1952 (R. 65). Following arguments by the Government and by the defendant, the Court sustained the motions to dismiss as to all 101 counts of the first indictment, and as to the first count of the second indictment (R. 65).

In ruling on the defendant's motions to dismiss, the Court stated in its oral opinion (R. 66-69) that the failure to report each payment of $600.00 or more on the 15th day of February following the year in which the payment was made does not constitute a separate and distinct offense. The Court held also that the statute intended that an individual be required to file only one annual return, asserting:

> "I think that form 1096 is the form that is anticipated required by the statute and that the information

which has been described here as being required in form 1099 as a part of 1096. I don't think they are separate and distinct. I think that it is one. I think that 1096 is the one that the law requires and that the information contained in 1099 must be made a part of 1096. I think if that information is not contained in 1096, that the person who is required to file the form might be indicted for making a false return and not for a separate and distinct offense'' (R. 66, 67).

The Court thereupon sustained the defendant's motion to dismiss the indictment in cause No. 18,188, and then in considering the second indictment began to discuss the question of jurisdiction. In this regard the Court held that, as to the year 1948, the Treasury Regulations then in effect required that the Internal Revenue Service Forms 1099 and 1096 be filed in New York City rather than in Kansas City, Missouri, and that therefore there was no jurisdiction in the Western District of Missouri for the first count of the indictment. The Court took judicial notice of the Treasury Regulations requiring the filing of the forms in question with the Processing Division in New York City for the calendar year 1948, and also of the regulation, approved on February 16, 1949, under T. D. 5687, 1949-1 Cum. Bull. 9, which Amended Regulation 111, Section 29.147-1, changed the place where these forms were required to be filed from New York City, New York, to Kansas City, Missouri. The Court thereupon sustained the motion to dismiss the first count of the indictment.

Counts two and three of the second indictment were upheld by the Court and the defendant's motion to dismiss these counts was overruled (R. 65). The Government has taken no appeal from the dismissal of the first count of the second indictment and counts two and three of said indictment are presently pending in the said District Court for the Western District of Missouri.

SUMMARY OF ARGUMENT.

Form 1099 is not a return within the meaning of Section 145 (a) of the Internal Revenue Code, which section imposes criminal penalties for failure to file returns such as individual income tax returns, fiduciary returns, corporation returns, and declaration returns of estimated tax. The return within the meaning of that section is that type of document filed by any person subject to a tax liability relative to his own tax liability, and is the form from which the net taxable income of a person is computed, assessed, and subject to collection.

The statutory language of Section 145 together with the Regulations issued under this statute both indicate that a "return" is an income return. Regulation 111, Section 29.145-1 mentions only that a tax payer is subject to penalties under Section 145 (a) as to his own income.

Other sections of the Code indicate that "return" means an income return within the provisions of Section 145. Thus, Section 55 dealing with the public record and inspection of returns speaks of the return upon which the tax has been determined. T. D. 4929, issued under Section 55, stated that information returns, schedules, lists and other statements are designed to be supplemental to or become a part of the return. This then is an administrative interpretation that there can only be one return for a taxable year. A "return" must be signed under oath or under a declaration that it is executed under penalties of perjury. Form 1099 contains no provision for its execution under oath or declaration, nor indeed does it contain any place for a signature. Other so-called informational returns either require an oath or are of such a nature as to make the computation, assessment and collection of the tax possible from an inspection of one document.

The executive departments charged with the administration and enforcement of the Act have not given indi-

viduals any "fair warning" that their conduct in not filing the information required by Section 147 constitutes a violation of Section 145. The executive departments further have uniformly construed the criminal penalties of Section 145 as not including the filing of the forms in question. The lack of recognition under the voluntary disclosure policy of the Bureau of Internal Revenue that the failure to comply with the provisions of Section 147 was a criminal offense is an administrative determination which supports the foregoing conclusion. The history of the various income tax laws indicate that there can be only one failure or default to file a return which would subject an individual to a penalty under the provisions of Section 145 (a) during a given taxable year. Under the Revenue Act of 1913, which established the current income tax law, the payor was required to file a return for the recipient of the income. If the recipient wished to acquire any deductions he was required to file a claim with the payor and this became a part of the payor's return. These withholding provisions were eliminated by the Revenue Act of 1916. However, withholding provisions were carried on throughout the years in regard to non-resident aliens. Section 143 of the present Internal Revenue Code provides for the withholding tax at the source for non-resident aliens. Under subsection 143 (e) if the recipient pays the tax, the withholding agent is not subject to any penalty. The failure of the Revenue Act to include a similar provision in dealing with information required by Section 147 indicates that there is no penalty for failure to file any information under that section.

If the failure to comply with Section 147 constitutes a failure to file a "return" within the meaning of Section 145 of the Code, there can be but one such failure for each taxable year. Section 147 provides that a "return" thereunder shall be in the "form and manner" prescribed by the Commissioner. The Commissioner has prescribed that

the information required under Section 147 shall be submitted on Form 1099 accompanied by verified Form 1096. It is accordingly submitted that a Section 147 "return" in the "form and manner" prescribed by the Commissioner consists not of Form 1099 alone, but of Form or Forms 1099 together with a single verified Form 1096.

The fact that the Regulations under Section 148, which also requires Forms 1096 and 1099 to be filed, refer to "the return" in speaking of extensions allowed by the Commissioner is also an indication that there can be only one omission per taxable year. The fact that there is only one oath or verification required per taxable year and that that verification or oath is on Form 1096 indicates again that there can be only one offense per taxable year.

The failure to file a group of returns attached together at a given time and at a given place is only one failure. Since it is only one failure, it is the result of but a single impulse or purpose. Even if the filing of these forms is not considered to be one failure, it certainly must be construed as a "course of conduct," as that term is described in the case of United States v. Universal C. I. T. Credit Corporation, 344 U. S. 218.

It would be anomalous to hold that an individual who fails to file the information required by Section 147 would be subject to a more severe penalty than an individual who fails to file his own individual income tax return, especially since there is no clear Congressional mandate warranting such an interpretation. If Congress had intended to make the filing of each one of these forms a separate offense, it could have done so by clear and unambiguous language. Its failure so to do indicates that at the most, there can be only one offense per taxable year.

ARGUMENT.

I.

A person failing to file Internal Revenue Service Form 1099, showing payments made by him to another of $600 or more of fixed or determinable income for a taxable year is not subject to the criminal provisions of Section 145 (a) of the Internal Revenue Code.

The appellee in the instant case has been charged with the violation of Section 145 (a) of the Internal Revenue Code, by failing to file Internal Revenue Service Form 1099, setting forth information required by Section 147 of the Code. It is the appellee's contention that such failure to file these forms can not be considered an offense so as to subject the party failing to furnish such information to the penal provisions of Section 145 (a).

The "return" required by Section 145 (a) is an income return of the type required by Section 51 of the Internal Revenue Code. A return thus can be defined as the annual disclosure by the taxpayer of the relevant facts of his income. Compare Helvering v. Mitchell, 303 U. S. 391, 399. In other words, it is the type of report or form prepared by the recipient of the income for the purposes of the computation by that person of his own tax liability, and for the purposes of the "computation, assessment or collection" of that person's tax liability by the Government. Section 145 (a) imposes criminal penalties for failure to file returns such as individual income tax returns, fiduciary returns, corporation returns, and declaration returns of estimated tax. Appellee is corroborated in this contention by the language of related provisions of the Internal Revenue Code, by the historical background of the income tax law, and by the Treasury Regulations and administrative interpretations of the Act.

1. The very regulations issued by the Treasury Department with regard to Section 145 of the Code themselves indicate that Section 145 (a) relates to returns relative to the taxpayer's own income. Regulation 111, Section 29.145-1 does not mention that the failure to furnish information under Section 147 constitutes an offense under Section 145 (a). Indeed there is no mention made concerning the furnishing of information regarding the payees of the taxpayer. That Regulation states in part:

> "The wilfull failure of a taxpayer to give information required in **his** return as to advice or assistance rendered as to advice or preparation of the return, and the wilfull failure of the person preparing a **return** for another to execute the sworn statement required with reference thereto, makes such persons subject to the penalties imposed by Sec. 145 (a)." (Emphasis supplied.)

And the last sentence of this regulation provides:

> "The privilege against incrimination in the Fifth Amendment to the Constitution is not a defense to a charge of failure to file a return, and does not authorize a refusal to state the amount of the income, though the taxpayer's income was made through crime."

Obviously, therefore, all of the provisions relative to the penalties set out in Section 145 (a) for the failure to make a return deal solely and exclusively with the punishment prescribed for a party's failure to make a return to the Government as to his own income, and could not, therefore, deal with the type of information required in Section 147 of the Internal Revenue Code.

Aside from the Treasury Regulations, however, it is urged that the very provisions of the Internal Revenue Code itself lend strength to the appellee's assertion herein that the information required under Section 147 is not the

type of return referred to under the penal provisions of Section 145 (a).

Turning our attention first to Section 145 (a) itself, it is apparent that the whole tenor of this Section relates to frauds and "potential" frauds committed by persons with regard to their own income tax liability. Section 145 (a) makes it an offense: 1) to fail to pay a tax,[1] 2) to fail to make a return or declaration for the purpose of the computation, assessment or collection of a tax,[2] 3) to fail to keep any records for such tax purposes, and 4) to fail to supply information for such purposes.[3] It is significant that that section deals with a specialized return for the purpose of the computation, assessment or collection of a tax. In other words, those terms taken together indicate that the purpose of the return itself is the levy of a tax, rather than the verification of a tax. With reference to Form 1099, here in issue, and required under Section 147, it should be noted that it deals with disclosure relative to the tax liability of persons other than the taxpayer, and is not subscribed or even signed by the person making the payment therein set out. Indeed there is no place on the Form itself[4] for such a signature or subscription.[5]

2. That the word "return" as used in Section 145 of the Internal Revenue Code means an income return is further corroborated by its use in various other sections of Chapter 1 of the Code. Section 51 of the Code provides for the filing of a "return" dealing with one's own tax liability, for it requires the furnishing of the amounts of one's gross income and the deductions and credits per-

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1 Cf. Spies v. United States, 317 U. S. 492, 496.

2 United States v. Sullivan, 274 U. S. 259, 262.

3 United States v. Murdock, 290 U. S. 389, 391.

4 Government's Brief, page 45.

5 The reverse side of Form 1099, which indicates that individuals must file income tax returns, lends further weight to the argument that Form 1099 is not the return referred to in Section 145 (a) of the Code.

mitted under the law. It specifies that the return shall be verified by a written declaration that it is made under the penalties of perjury. Section 52 provides for the making of a return by a corporation and requires the stating therein of the amount of the corporation's gross income and its deductions and credits. It similarly must be sworn to by various officers of the corporation. Section 53 provides that "returns" shall be made to the Collector for the District in which is located the legal residence or principal place of business of the person making the return. In the case of the forms required to be furnished under Section 147 of the Code on the other hand, the forms are filed with the Commissioner of Internal Revenue. It is obvious that the reason for this is that the "return" is furnished and mailed to the Collector of Revenue for the purpose of the collection of the tax which is due from the sender of such returns. The forms provided by Section 147 are sent to the Commissioner and are apparently used in verifying the income tax returns of others.

Section 54 of the Code provides that "every person liable to any tax" or for the collection thereof shall keep records and make "returns" as the Commissioner may prescribe. The person who is not therefore subject to any tax liability under the chapter would not be required to make a "return."

Section 55 of the Internal Revenue Code deals with the penalties prescribed for Federal employees and other persons for disclosing information as to such returns. It is quite pertinent and important to note that the Treasury Regulation under this Section, being Regulation 111, Section 29.55 (b)-1 provides:

> "For the purposes of this Section the word 'returns' shall include information returns, schedules, lists, and other written statements filed with the Commissioner designed to be supplemental to or to become a part of income returns."

Thus for the purpose of insuring the secrecy of written statements filed with the Commissioner, the Treasury Department has seen fit to specifically include such statements under the protection of this statute. It is particularly significant that such a Treasury Regulation defining returns as that last quoted does not appear in the Treasury Regulations pertaining to Section 145 of the Internal Revenue Code. Certainly, if the Treasury Department believed it necessary, in discussing the secrecy of returns, to state specifically that for the purposes of that Section the returns should include information returns and other written statements filed with the Commissioner, a fortiori should such a regulation have specifically been made to bring Form 1099 within the provisions of the returns required under Section 145 (a) of the Code. Again at Section 463C.35, T. D. 4929, 1939—2 Cum. Bull. 91, 96, the Treasury decision dealing with the publicity of returns, reference is made to such returns as an individual's return, partnership returns, returns of estates, trusts, corporations, associations, joint stock companies and insurance companies, and the decision states that for the purpose of that section, being Section 55 of the Code, information returns, schedules, lists and other statements which are designed to be supplemental to or to become a part of the returns shall be subject to the same rules and regulations as to inspection and publicity as are the returns themselves. Also under Executive Order 8230, August 28, 1939, T. D. 4945, 1939-2 Cum. Bull. 97, it was ordered that the following designated returns made under the Internal Revenue Code shall be open to inspection in accordance with the rules prescribed by the Secretary of the Treasury in the Treasury decision above referred to, namely, income, excess profits, capital stock, estate, and gift tax returns, and returns of employment tax on employers.[6]

[6] Other executive orders dealing with inspection of returns also do not recognize any separate "information return." Executive Order 10132, June 17, 1950, T. D. 5793, 1950-2, Cum. Bull. 37; Executive Order 10275, July 25, 1951, T. D. 5848, 1951-2, Cum. Bull. 47.

Continuing with other related provisions of the Internal Revenue Code, Section 142 thereof providing for the filing of fiduciary returns indicates that a fiduciary shall file a return for any individual estate or trust for which he acts, setting out therein the items of gross income and the deductions and credits. Section 143 provides for the deduction and withholding of a tax by a person making payments of fixed or determinable income to non-resident aliens and the making of the return of such payments by March 15 of each year. The return therein required is thus somewhat similar to the individual return required in Section 51 of the Code, and must similarly be filed with the Collector of Internal Revenue.

Significantly Section 143 (e)[7] provides that if any tax is required to be withheld, and it is actually paid by the recipient of the income, it should not be again collected from the withholding agent, "nor in cases in which the taxes are so paid shall any penalty be imposed upon or collected from the recipient of the income or the withholding agent for failure to return or pay the same unless such failure was fraudulent and for the purpose of evading payment." That section indicates a legislative intent not to impose any penalty upon any withholding agent when the recipient pays the proper amount of the tax. Thus, if Section 145 (a) applies to returns under Section 143, then a withholding agent would not be subject to any penalty if the recipient pays the proper amount of the tax. It would follow that, since Section 143 (e) relieves the withholding agent of any penalty for faiure to return or pay the tax and since there is no corresponding provision for information furnished under Section 147, therefore Section 145 (a) could not be held applicable to Section 147. Otherwise a person failing to furnish information under Section 147 would be subject to a more severe penalty than a tax withholding agent.

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7 This provision has been carried in prior Revenue Acts, e. g., Section 221 (1), Revenue Act, 1918, 40 Stat. 1072.

Section 276 of the Code deals with assessment of the tax in the case of a "false or fraudulent return." It obviously refers to the one annual income tax return.

Section 291 deals with interest and additions to the tax which are assessed in case of "failure to make and file return required by this chapter" within the time prescribed by law.[8] This obviously refers to a return of one's own income tax, because the percentage assessments of interest are computed on such income tax of the individual.

A significant section of the Code relative to the meaning of a "return" is Section 3603 found in Chapter 34 of the Code, which provides that the Commissioner of Internal Revenue may require any person to "make a return," keep records or render certain statements under oath as the Commissioner "deems sufficient to show whether or not such person is liable to tax."

Many other provisions of the Internal Revenue Code also reflect this interpretation of the term "return" and completely negative the contention of the Government that the information required to be supplied under the provisions of Section 147 come within the penal provision for the failure to make a return as set out in Section 145 (a) of the Code.[9] From the foregoing it is apparent that the word "return" as used in Section 145 (a) of the Internal Revenue Code has reference to an income return, and such a return as is required for the collection, assessment and determination of the income tax of that person, partnership, corporation or other entity preparing and filing said return.

3. There are to be sure other sections of the Code which require the filing of so called information returns. How-

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8 A purported income tax return which was neither signed nor verified was not a return required by the Revenue Act. Plunkett v. C. I. R., 1 Cir., 118 F. (2d) 644.

9 Other sections of the Internal Revenue Code relative to income tax, and which use the word "return" are Sections 3611-3614, 3634, 3616.

ever, those information returns are in themselves income returns, and generally the statutes or the regulations issued thereunder provide whether or not a penalty is applicable. For example under Section 153 of the Code, certain information is required to be furnished by various tax exempt organizations and certain trusts. This statute specifies in detail the information required to be furnished, but in the same section expressly states that a wilful failure to furnish the information required subjects the violator to the penalties provided in Section 145 (a). The return required under this section can also be considered to be in the nature of an income return, even though Congress has exempted these organizations from taxation. Similarly Section 187 of the Code requires certain partnership returns. This section requires a partnership to make a return for each taxable year showing specifically the items of its gross income and deductions. That return also has to be sworn to by one of its partners. This, it can be seen, is an income return, even though partnership returns are not in themselves taxable, for the net income of a partnership is computed generally in the same way as that of an individual. Also the return must be sworn to and filed with the Collector, as distinguished from the forms 1099 required under Section 147.

Section 500 of the Code places a surtax on personal holding companies. Section 508 states that all provisions of the law including penalties applicable in respect to the income taxes imposed under chapter one are applicable to this surtax. Regulation 111, Section 29.508-1, specifically states that the income tax penalties imposed under chapter one apply to the surtax. Here again this return is an income return although of a special nature made for the purpose of additional income tax. The form required under these sections of the Code is form 1120H and is a form which has to be verified just as a normal income tax return. From these related sections it can be seen that a

return, particularly as that term is used in Section 145 (a), is a document dealing with the recipient's own income, and which must be filed under oath, and is different from the information required under Section 147. Further, it should be noted that in the Internal Revenue Code there is no instance where criminal penalties are imposed for the doing or the failing to do an act without the concurrent imposition of civil penalties, and a reading of the Code indicates that no civil penalty whatever is imposed for violation of Section 147, whereas criminal sections of the Internal Revenue Code do refer to the imposition of other penalties. Indeed under the very withholding income tax law which the Government relies on (Government's Brief, page 29) in support of its contention that there is more than one offense in a given year, it is to be noted that that section as well provides for the imposition of a civil penalty as well as a criminal penalty for the violation of its provisions. Title 26, U. S. C. 1631.

4. Certainly under the reasoning set forth in this argument it cannot be said that an individual has "fair warning" of his being subjected to a criminal prosecution under Section 145 (a) of the Code by reason of his omitting to file the informational forms required by Section 147. And certainly the administrative interpretation of these sections has not been consonant with the application of the penal provisions of Section 145 (a) to the omissions here referred to. For there appears to be no reported case in which the Government has sought by criminal action to enforce the provisions of Section 147 of the Code, and such fact cannot be discounted in determining whether the failure to perform such acts as are set out in that statute subject one to criminal prosecution. As was stated in the case of United States v. Farrar, 281 U. S. 624, in considering the popular construction of the National Prohibition Act by prosecuting officers over a ten year period:

> ". . . during the entire life of the National Prohibition Act, a period of ten years, the executive departments charged with the administration and enforcement of the act have uniformly construed it as not including the purchaser in a case like the present; no prosecution until the present one has ever been undertaken upon a different theory; and Congress, of course well aware of this construction and practice, has significantly left the law in its original form."

There is no reported case indicating that a criminal prosecution has ever been undertaken by the Government in an instance like the present one, and Congress, well aware of this fact, has never sought to change the pertinent provisions of Section 147 or to declare therein that failure to file such informational forms shall be considered a violation of Section 145.[10]

Also until 1952 it had been the established policy of the Bureau of Internal Revenue to permit an individual voluntarily to disclose to Treasury representatives either that he had wilfully failed to file an income return or that the income return which he had filed was fraudulent, and thereby no criminal prosecution would be recommended.[11] Thus, the fact that the Treasury Department permitted criminal immunity for voluntarily disclosing a failure to

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[10] See United States v. Murdock, 290 U. S. 389, where the defendant was prosecuted for failure to supply information as to deductions claimed, but was not prosecuted for failure to file Forms 1099; United States v. Sullivan, 274 U. S. 259, where the prosecution was apparently on the theory that Section 145 (a) referred only to income returns.

[11] Statements of the policy were announced as follows:

Secretary of the Treasury Morgenthau, "Daily Report for Executives," A-21. Bureau of National Affairs, May 28, 1945;

Secretary of the Treasury Vinson, as reported in the Washington Post, August 21, 1945;

Secretary of the Treasury Snyder, as reported in the New York Times, August 8, 1946;

J. P. Wenchel, Chief Counsel of the Bureau of Internal Revenue, speaking before the 1947 Tax Executives Institute, New York City, reprinted in 25 Taxes 485.

The Treasury Department announced in S-2930, January 10, 1952, that it had abandoned the policy.

file an income return or the filing of a fraudulent income return would, since no such procedure existed in the case of the instant informational forms, indicate a recognition by the Treasury Department that the failure to file such informational forms did not constitute a criminal offense.

To rule now after a long period of non-enforcement that the failure to comply with the requirements of Section 147 constitutes a criminal offense would certainly create injustice and confusion among the vast majority of taxpayers. See Zellerbach Paper Company v. Helvering, 293 U. S. 173, 178, wherein this Court discussed the question of whether the passage of a retroactive income tax law required the filing of a new income tax return for the retroactive period and so tolled the running of the statute of limitations. In ruling that it did not, this Court held that to justify such a holding the statute would have to be very plain in that respect, and that the statute must leave no doubt in the mind of the average man that he was subject to such duty. The Court said that perhaps thousands of taxpayers, though innocent of wilful wrong, would be deprived of the protection of any rule of limitation and would incur other penalties unwittingly. Similarly in the instant case a statute which does not clearly make its violation a criminal offense and which has never been enforced as such ought not be made "an instrument for so much of hardship and confusion." Zellerbach Paper Company v. Helvering, supra. This should especially be true since, if Congress had intended that criminal liability attach to the failure to comply with Section 147, such a provision could easily have been included therein. The taxpayer is not given the adequate fair warning which is a prerequisite for the incurrence of criminal liability. United States v. Cardiff, 344 U. S. 174.

5. Further indication that criminal penalties do not and should not result from the failure to comply with provi-

sions of Section 147 of the Code is supplied by the case of McDonough v. Lambert, 1 Cir., 94 F. (2d) 838, in which case the Government sought a subpoena duces tecum to require the furnishing of certain books pertaining to payments made by the McDonough Company and charged on their books as legal expenses. The Circuit Court of Appeals for the First Circuit vacated the subpoena duces tecum and said that the Government had failed to make use of the existing statutory provisions authorizing the acquisition of such information. It went on to discuss Section 147 of the Code, and said that if the information were not supplied under that Section, the Commissioner of Internal Revenue or his special Agent might demand that the forms be filed and that if the party continued to refuse to file the same, the Commissioner might issue a summons requiring him to appear before him and give such testimony. If such procedure failed the Commissioner might then request that process be issued and that the party be required to appear for such testimony. That Court also stated that by adopting this method of procedure each section of the statute would fulfill its function. Obviously the Court recognized that there was no criminal liability in the failure to comply with Section 147, and indeed the Government itself must have recognized this fact for it apparently filed no criminal prosecution in that case, which seems to be one of wilful failure to supply the information here in question. To construe the sections of the instant statute otherwise is to abuse its wording and the interpretation made thereunder and to read into the section something which Congress could easily have supplied if it had so intended. The case of Appeal of the National Concrete Company, 3 B. T. A. 777, lends further weight to the argument that we are not here dealing with a criminal offense, since in that case the Board of Tax Appeals held merely that by ignoring the requirements of that section of the internal revenue statute which is now

Section 147 the taxpayer had waived the right to claim such expenditure as a deduction on his income tax. There was apparently no criminal prosecution, however, in that case and the Court made no mention of its applicability to such a statute. Obviously from a reading of these decisions and administrative authorities it is apparent that the purpose of the statute is fulfilled by the Government's ability to obtain such information by civil process and that no criminal liability was ever intended for its violation. A pertinent discussion of the section involved and a striking example of the fact that the statute was intended only for civil and administrative purposes may be found at S. Rep. No. 617, 65th Cong., 3rd Sess., 1939-1 Cum. Bull. (Pt. 2) 117, 124, Revenue Act of 1918, wherein it was said that returns of such information were to be made only to the extent prescribed by the Commissioner with the approval of the Secretary, **in order not to burden taxpayers with the labor and expense of furnishing useless information.**

The Government at page 26 of its Brief has stated that the importance of the information forms here in issue may be determined from the number filed during the years 1948, 1949 and 1950. The Government fails to state, however, how many of the indicated forms were filed by individuals as contrasted with the number of forms filed by corporations. The Government likewise fails to indicate the number of such forms which were filed under the statutory section with which we are here concerned. Rather, it is interesting to note in contrast that during the year 1948, one of the years mentioned by the Government, there were 52,072,006 individual income tax returns filed.[12] The Annual Report of the Commissioner of Internal Revenue in its list of returns and declarations filed does not

12 Statistics of Income for 1948, Pt. 1, Preliminary Report of Individual Income Tax Returns and Taxable Fiduciary Income Tax Returns filed during 1949. Prepared under direction of Commissioner of Internal Revenue by the Statistical Division.

include Form 1096 and Form 1099, although employers withholding statements are included.[13]

Appellee has shown that the failure to file informational Form 1099 could not be considered an offense under the penal provisions of Section 145 (a) of the Internal Revenue Code. This form is not made under oath and is merely attached to Internal Revenue Service Form 1096. Thus if there is any offense whatever committed by an omission to furnish the information required in Section 147, it is by the failure to file Form 1096, as the District Court indicated, rather than the more accompanying Form 1099. A different interpretation should not be permitted in the instant case without a clear, unambiguous and unequivocal mandate from the Legislature.

II.

Under any circumstances, there can be but one prosecution for failure to furnish the information required in Section 147 of the Internal Revenue Code relative to the payments described therein which are made during a given taxable year.

Appellee has argued in the preceding section of this brief that the penal provisions of Section 145 (a) of the Code cannot be applied to prosecute an individual for his failure to furnish the Commissioner of Internal Revenue with the information required by Section 147 of the Code. Appellee further contends, however, that even were it to be held that an omission to furnish the information under Section 147 constitutes an offense within the penalty provisions of Section 145 (a) of the Code, nevertheless the failure to file such information as is required by Section 147 can constitute only one offense during any taxable year. In the causes pending in the trial Court, the Gov-

[13] E. g. Treasury Department Annual Report of the Commissioner of Internal Revenue, Fiscal Year ending June 30, 1947, p. 20 (1948).

ernment has sought in three separate counts of the second indictment not only to prosecute the defendant for his failure to furnish such information as to his transactions in 1948, 1949 and 1950, but also in a separate indictment, that is, the one presently before this Court, the Government has also sought to utilize the very same payments and the very same transactions which are set out in the three counts of the second indictment to prosecute the defendant in 101 counts in this indictment for each individual payment allegedly made by him during the three years in question. It is the contention of this appellee that the language of the statute in question, the administrative regulations issued thereunder, the legislative history, and the decisional authority of this Court lead to a conclusion that if an offense has been committed by the failure to file Internal Revenue Service Forms 1099 and 1096, only one such offense could have been committed during any one taxable year.

1. The Government contends in its Brief before this Court that the language of Section 147 of the Code plainly contemplates the filing of an individual information "return for each individual payee." However, a closer examination of this Code section reveals that the term "return" used in that section could only be meant to apply to all payments made by an individual during a given taxable year. The Government at page 19 of its Brief has set out only portions of Section 147 (a). Said Section 147 (a) is set out in full in the Appendix to this Brief, infra, p. 42, and it is significant to note that the heading of said Section 147 (a) is "Payments of $600 or more." The body of the section goes on to indicate that a person coming within the requirements of the statute shall render a "return" to the Commissioner for such payments. Furthermore, although the section begins with the provision that all persons making the required payment to another person shall file such a return, yet it is noteworthy that the sec-

tion provides that in the case of such "payments" made by the United States or its officers or employees the same requirement as to the filing of a return is provided. Certainly it could not have been intended that as to a private individual this section requires the filing of a return for each individual payment, whereas in the case of the United States Government, its officers or employees, it contemplates the filing of a return for all the payments made during a given year. Furthermore the "return" mentioned in the section itself, as indicated in the preceding argument in this brief, is not the type of return set out in Section 145 and is merely a non-technical term used to signify the furnishing of information as to payments made to others.[14]

Also the language of this section prescribes the furnishing of a return "under such regulations and in such form and manner and to such extent as may be prescribed by the Commissioner of Internal Revenue." The regulation requires that they shall be accompanied by Form 1096. The "form and manner" prescribed by the Commissioner consists of verified Form 1096 together with Forms 1099. Accordingly, a violation of Section 147 must consist of a failure to render a return in the "form and manner" prescribed by the Commissioner and approved by the Secretary. The form and manner prescribed is not merely the return of Form 1099. It requires both forms. Forms 1099 and one Form 1096 constitute the "return" referred to in Section 147 because it states that the "return" shall be in such "form and manner" as prescribed by the Secretary. The Forms 1099 and the verified Form 1096 are as much a part of the "return" prescribed by the Commissioner as would be the several pages or schedules on an ordinary income tax return. An income tax return might by a regulation be made to consist of several separate documents but it would still be one "return". Obviously Con-

14 Florsheim v. United States, 280 U. S. 453.

gress could not have intended that the number of offenses which the Statute contemplated was to be left to the whim and caprice of the Commissioner in his determination that for his own convenience each payment should be set out on a separate Form 1099. Even assuming that the Congress could delegate to the Commissioner of Internal Revenue the power to designate the number of crimes within the meaning of a certain statute, yet such a serious delegation of authority should not be interpreted from a statute unless the language thereof contains a clear mandate to the Commissioner in this regard. Further, an inspection of the forms which the Commissioner has caused to be issued for the furnishing of such information indicates that the Commissioner himself contemplated only the filing of one set of information rather than the filing of separate information as to each particular payment. It is to be noted from Form 1096, set out at page 47 of the Government's Brief, that this constitutes a summary of the payments set out on Forms 1099 and that this is the only form required to be signed and verified by the individual preparing the form. Nowhere on Form 1099 does there appear any space for the execution or verification of the same by the payor, and, further, on Form 1099 the instructions state that "these forms must be forwarded with **return** Form 1096 to the Commissioner of Internal Revenue . . .", whereas, on Form 1096 the verification refers to Form 1099 as the "accompanying reports." A form which is merely an "accompanying report" and which does not even require the signature or verification of the maker thereof should not constitute a criminal offense against the laws of the United States.

The Regulations issued by the Treasury Department under Section 147 lend further weight to the authority that only one offense could have been intended within the provisions of that section. For Regulation 111, Section 29.147-1, which provides for the filing of Forms 1099 and

1096, also states that the same information with respect to "distributions to beneficiaries of a trust or of an estate shall be made on Form 1041 **in lieu of** Forms 1099 and 1096." Schedule G of Form 1041 provides a list for the inclusion on one form of all of the payees as well as the amounts paid to them. Obviously the failure to file such form could only be considered one offense, and if, in that case, Form 1041 can be filed in lieu of Forms 1099 and 1096 it would be incongruous to hold in the case of Form 1099, merely because the Commissioner has prescribed individual forms for each payment, that the failure to file each particular form for each particular payment constitutes a separate offense.

Section 148 of the Code also requires the filing of Forms 1099 and 1096. That section requires certain corporations to furnish information. Thus under Section 148 (a) corporations when required by the Commissioner must render a return verified under oath showing payments of dividends. Regulation 111, Section 29.148-1 requires information on Forms 1096 and 1099 concerning corporate distributions amounting to $10.00 or more during the calendar year beginning 1951. Prior to that time returns were only required in case of payments amounting to $100.00 or more. It is noteworthy that Section 29.148-1 (c) of the Regulation provides "that in any case in which it is impossible to file the return within the time prescribed in this section, the corporation may upon a showing of such fact obtain a reasonable extension time for filing a return." It is clear under this section that the Commissioner is treating the information under Forms 1096 and 1099 to be one return. This subsection then allows an extension of time for a period not exceeding six months. Section 148 also requires information respecting a contemplated dissolution or liquidation. The information required under this subsection has to be rendered under oath and furnished on Forms 1096 and 1099. Section 148 (f) requires information from

corporations relative to patronage dividend. Under Section 29.148-4 of the Regulation, Forms 1099 and 1096 are required to be used. Subsection (c) of this regulation again provides for an extension when it is "impossible to file a return within the time prescribed." Here again is an indication that only one verified "informational return" is required. It is apparent then from the foregoing that if the omission to file Forms 1096 and 1099 is a crime, there can be only one act of omission per taxable year since all the forms are required to be filed together at the same time and at the same place. And since there can be only one act of omission, there can be only one offense.

2. In any event, if the Court should be of the opinion that there are several acts of omission involved during a given year, yet the language of the statute in question and the authority of this Court as expressed in its decisions lead to the conclusion that if an offense at all was contemplated for the failure to file the information set out in Section 147, the offense made punishable thereunder is a course of conduct rather than separate individual acts. The statute itself indicates that it is treating as one offense all violations that "arise from that singleness of thought, purpose of action" which is deemed a single impulse. A decision obviously in point in this discussion is that of United States v. Universal C. I. T. Credit Corporation, 344 U. S. 218, which case had under discussion the very point which appellee herein makes. In that case the Government sought to prosecute the defendant corporation in 32 counts for alleged criminal violation of the Fair Labor Standards Act. That Act required an employer to pay "each of his employees" a certain minimum wage, prohibited the employer from employing "any of his employees" for more than a certain number of hours per week unless overtime was paid, and required him to keep records of "the persons employed by him." The statute itself made it unlawful for an employer to violate "any of the provisions

of these sections." Just as in the instant case the Government is here seeking to prosecute the appellee in 101 counts for having made 101 alleged separate payments during the three-year period involved, so in the cited case the Government sought to prosecute the defendant corporation for failure to pay minimum wages, for violation of overtime provisions and for failure to comply with the record keeping requirements, and the various counts charged violations as to separate work weeks and as to separate employees. In that case the District Court had dismissed all but three of the counts, one for each section of the statute violated, and on appeal by the Government to this Court, it was held that the alleged offense in question and made punishable under the Fair Labor Standards Act was a course of conduct rather than a series of separate alleged offenses. The decision of the District Court was therefore affirmed by this Court.

Applying the principles of the cited case to the one presently before this Court, we should in determining the allowable unit of prosecution utilize all things possible that express the purpose of Congress in enacting the particular legislation. This is particularly true in the instant case, where we are dealing with a statute which, according to the Government's point of view, defines conduct entailing penalties and prison. And, just as in the Universal C. I. T. case, when we are choosing between two readings of a Federal statute, if we are here dealing with a criminal statute, we should before we read the statute in a manner which would permit the prosecution of a person in 101 counts for 101 payments, and thus subject him to very stern punishment require that Congress should have spoken in language that is clear and definite, and not arrive at such conclusion from ambiguous implications from the statute. Here, just as in the cited case, if Congress had intended that each separate failure to file Form 1099 was to constitute a separate offense, it could have

particularly so stated in the terminology of the statute. Since the statute is not decisively clear on its face and is inexplicit in its language, the Government's construction, so harsh and arbitrary in its nature, cannot stand. The Government has sought to distinguish the Universal C. I. T. case, but states merely that in that case this Court simply found a Congressional purpose to punish a course of conduct rather than an employer's failure to perform his obligations as to each employee. The Government fails to state, however, in what respect the facts of this case differ from the Universal C. I. T. case or how here Congress could not just as easily have prescribed that each failure to file a separate Form 1099 would constitute a separate offense. In this regard it is further obvious that the cases cited by the Government in support of its contention that the allowable unit of prosecution in this case is the failure to file each separate Form 1099 are not applicable to the issues herein. For in the case of Blockburger v. United States, 284 U. S. 299, the prosecution arose out of two separate narcotic sales, even though they occurred within the space of two days. In that case this Court pointed out that the Narcotics Act did not create the offense of **engaging in the business** of selling these certain drugs but penalized any **sale** made in the absence of the qualifying statutory requirements. In that case the acts forbidden by the statute were completed upon the termination of each particular sale. All of the statutory elements of the offense had thereupon taken place and each particular sale was the subject of a successive impulse. As pointed out therein the test of whether a course of action is prohibited by a statute or whether each particular act is prohibited is whether the impulse for the act is single or multiple. So in the case of Ebeling v. Morgan, 237 U. S. 625, the defendant was convicted of cutting six separate mail bags of the United States with intent feloniously to steal the contents thereof. In ruling that each cutting of

a separate mail bag constituted a separate offense, this Court held that after the cutting of each particular mail bag with the prescribed intent the offense prohibited by the statute was completed. Irrespective of any attack on any other bag, that particular offense containing all of the statutory elements was committed each time a mail bag was cut. That case was distinguished from those charges of continuous offenses where the crime is, by reason of its very nature, a single one though committed over a period of time.

It is obvious that the type of offenses set out and discussed in those cases are different entirely from the offenses charged against this defendant. For here, if the statute sets out a criminal offense, that offense and all of the elements thereof were not completed and did not terminate after each payment or alleged transaction by the defendant with the 101 respective payees set out in the 101 counts of the indictment. After the transactions and the individual alleged payments were made no offense, if any, was committed until February 15th of the following year when, under a single impulse or purpose, the defendant omitted to file the informational forms with the Commissioner of Internal Revenue. Up until that time no offense whatever could obviously have been charged against him. It can scarcely be said, therefore, that an offense was committed by the defendant at the time of the individual payment to the individual payee, under the assumption that at that time the defendant intended not to file an informational report as to such payment. For the statute certainly does not penalize an intention in the mind of the payor, but rather his wilful failure to file such a form. Compare United States v. Costello, 2 Cir., 198 F. (2d) 200, 204, in which it was held that where a witness is called before a Congressional investigating committee to give testimony and refuses to answer various questions before such committee on

a specified day, there could be only one contempt against the committee, and the committee could not multiply his contempt by continuing to ask him questions which were followed by his refusal to answer.[15] That case, wherein the committee was seeking to obtain from the witness various different matters of information through separate questions, is analogous to the instant case wherein the statute requires information to be furnished as to various persons and various payments.

Also pertinent to this general argument is the case of Viereck v. United States, 318 U. S. 236, 241, involving a prosecution for wilful omissions to state facts in registration statements filed by the defendant with the Secretary of State in violation of an Act requiring the registration of certain agents of foreign principals. This Court, in its opinion, reiterated the rule that a person "may be subjected to punishment for crime in the federal courts only for the commission or omission of an act defined by statute, or by regulation having legislative authority, and then only if punishment is authorized by Congress." It therefore follows that the Commissioner in promulgating regulations specifying the number of information forms required to be filed by a taxpayer may not thereby multiply the number of offenses and the amount of punishment.

The discriminatory nature of the Government's contention that it be entitled to prosecute the defendant on 101 separate charges is illustrated by the fact that under the Government's theory, if a taxpayer fails to file his own income tax return, he is liable to only one prosecution, no matter how many separate transactions go into his indi-

15. A conspiracy under 18 U. S. C. 371 to evade or defeat the payment of a Federal income tax over a stated period of time which was based on a continuing single agreement is only one continuous offense. Braverman v. United States, 317 U. S. 49. The purchase of several containers of Narcotics at the same time and place is one offense. Anderson v. United States; 6 Cir., 189 F. (2d) 202, 204. See also Alabama Packing Company v. United States, 5 Cir., 167 F. (2d) 179, 182; Braden v. United States, 8 Cir., 270 F. 441, 444.

vidual return. However, if he files his own income tax return, and fails to file Form 1099 as to ten particular payments made by him during the year, he would, under the Government's theory, be chargeable with ten separate offenses. Again, if a taxpayer fails to keep records which show his payments to other persons he is subject to only one offense under the criminal statutes. On the other hand, under the Government's contention, if he does keep such records, which records are open to inspection by the Bureau of Internal Revenue, but fails to file Form 1099 as to such payments, he is again guilty of multiple offenses. Similarly, a taxpayer called by a revenue agent for questioning who refuses to give information concerning his receipts and disbursements and fails to answer a series of questions can be prosecuted for only one offense (United States v. Murdock, 290 U. S. 389), whereas here the taxpayer's failure to supply information as to disbursements made by him through payments to others is made the subject of a series of charges. Carrying the analogy one step further would the Government contend, in the event it was required of a taxpayer to list in separate schedules attached to his income tax return the number of persons who had paid him $600.00 or more during a given year, that the failure to file each such schedule would constitute a separate offense for each failure to list each individual source of his income?

3. A history of the Revenue Acts since the institution of the current income tax laws in 1913 also leads to the conclusion that there can be only one offense for failure to file a return in any given year. The Revenue Act of 1913, C. 16, § II, 38 Stat. 166, was enacted subsequent to the ratification of the 16th Amendment. The returns required under this Revenue Act were required to be filed by the payors of income. It provided that on or before March 1st a true and accurate return should be filed under oath or affirmation and that persons, firms and companies which

have the control of receipts, disposal or payment of fixed or determinable annual or periodic gains, profits and income, should in behalf of the person subject to the tax deduct and withhold the amount of the income tax and should make and render a return of the income of such persons. 38 Stat. 168. The person who was the recipient of the income could file with the withholding agent a signed notice claiming the benefits of any exemptions and deductions provided by law. The recipient was also required to file with the withholding agent a true and correct return of his income from all sources and this return became a part of the return to be made on his behalf by the person required to withhold and pay the tax. The penalty section, being subdivision F, at page 177, provided that if any person or corporation liable to make "the return or pay the taxes aforesaid shall refuse or neglect to make a return" such person shall be liable to a penalty of not less than $200.00 nor more than $1,000.00. The penalty section then went on to provide that any person required by law to make, sign or verify a return who made a false or fraudulent return or statement with intent to defeat or evade the assessment would be guilty of a misdemeanor and should be fined an amount not exceeding $2,000.00 and be imprisoned for a period not exceeding one year. 38 Stat. 171.

Thus, under the Revenue Act of 1913, it was clear that there was only one return and that this return was filed by the withholding agent. The recipient who wished to obtain credit for any deductions or exemptions would file a statement with the withholding agent and this became part of the return. In the instant case the forms required under Section 147 also became part of the income return of the payee. This is apparent under the statute (Title 26, U. S. C. 55) and the Regulations issued pursuant thereto dealing with publicity of returns. Indeed, this is conceded by the Government in its Brief (page 26) where it

is stated that Forms 1099 become associated with the income tax return of the payee taxpayer.

The Revenue Act of 1916 replaced the withholding requirement and required the individual recipient of the income to file his own return (the withholding agent was still required to withhold payment for non-resident aliens and interest from corporate bonds containing a tax free covenant provision).[16] This Act contains no indication nor does its legislative history indicate that Congress wished to multiply the number of offenses under the penalty provisions of the Act. The law still required one income return and merely shifted the onus of filing that return from the payor to the payee.

The Government in support of its contention that there can be a prosecution in multiple counts for failure to comply with the provision of Section 147 during a given year cites the payroll withholding provisions of the Revenue Act of 1942.[17] The Government, however, overlooks two significant amendments made to the Revenue Act of 1942 dealing with the abolition of the requirement that returns be filed under oath and with the amendment to Section 145 which provides that the failure to file a declaration may constitute an offense. Section 136[18] of that Act amended Section 51 of the Code and changed that statute from requiring individuals to make a return under oath to the requirement that the return be verified by a "written declaration that it is made under penalties of perjury."

Section 145 (c) was also added by the same section of that Revenue Act, and made it a felony for any individual to wilfully make and subscribe a return which he does not believe to be true and correct as to every material matter. This subsection made the perjury penalty applicable to a

16 Revenue Act of 1917, c. 63, § 1204, 40 Stat. 331, which amended § 8 of Revenue Act of 1916, c. 463, 39 Stat. 761.

17 C. 619, 56 Stat. 798, 884.

18 56 Stat. 828, 836.

return, although an oath was no longer required.[19] Of this the Senate Committee reported (S. Rep. No. 1631, 77th Cong., 2nd Sess., 1942-2 Cum. Bull. 504, 507):

> "The income tax law has always specifically provided that returns must be made under oath. This requirement causes considerable annoyance and inconvenience to taxpayers in that their returns must be sworn to before a notary public or other similar officers. Your committee bill removes this necessity by substituting for the requirements of an oath the requirement of a written declaration that the return was made under the penalties of perjury."

Thus the same Senate Report relied upon by the Government in its contention that multiple offenses can be committed recognized the fact that a return is a document that must be verified. Although this Act changed the oath requirement to a declaration requirement, nowhere in a Form 1099 is there either an oath or a declaration requirement. It thus can be seen that Congress at the time of the enactment of the current withholding tax law did not recognize that Form 1099 was a return within the meaning of the Act since the legislators considered a return as a document which was required to be filed under oath. This recognition by Congress would support the holding of the District Court in deciding that since Form 1096 contained a declaration that it was executed under penalties of perjury, Form 1096 was the form required by law.[20] Again the enactment of 145 (c) dealing with false returns is a recognition that a "return" either has to be verified by

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[19] Prior to the enactment of Section 145 (c) in 1942, persons filing a false oath to a tax return were subject to the penalties of perjury. United States v. Noveck, 272 U. S. 202, 206. Section 145 (c) has been replaced by Section 3809 of the Code.

[20] Said declaration is as follows:

> "I hereby declare under the penalties of perjury to the best of my knowledge and belief the accompanying reports on Form 1099 and Form 1099L, and/or the statements on the reverse of this form, including any accompanying schedules, constitute a true and complete return of payments of the above described classes of income made by the person or organization named during the calendar year 1950."

oath or by a written declaration setting forth that it is made under the penalties of perjury.

Apparently the Government's principal argument in this regard is that the enactment by Congress in 1942 of the withholding tax provisions was a recognition that the failure to file forms required under Section 147 was a criminal offense. S. Re. 1631, 77th Cong., 2d Sess., p. 172, is cited by the Government. It stated:

> "Section 470 provides criminal and civil penalties for the wilful failure of any employer to furnish a receipt to the employee showing the information required under this supplement or regulations made pursuant thereto or for furnishing a false or fraudulent receipt."

The Government argues that the committee in saying that "these penalties are prescribed in lieu of the penalty imposed by Section 147 of the Code, and are much less severe than those displaced" had reference to the information required under Section 147. This interpretation is in error. First, it could be argued that the failure to furnish a receipt after withholding a tax is an equivalent of the withholding return initially required by the Revenue Act of 1913 or an equivalent of the continuous requirement in regard to the withholding of income payable to non-resident aliens under Section 143. Further, it can be said that the severe penalty which was alluded to by this report referred to Section 145 (b) or to Section 145 (c). A "false or fraudulent receipt" may be an attempt to defeat and evade a tax. Cf. United States v. Beacon Brass Company, 344 U. S. 43. Also Section 145 (b) provides that "any person required * * * to collect, account for, and pay over any tax * * * who wilfully fails to collect or truthfully account for and pay over such tax * * * shall be guilty of a felony * * *." An employer who failed to furnish a receipt or failed to account to the Government

after collecting a tax might be guilty under this subsection of the Act.

Section 1626 (a) provides a criminal penalty for the wilful failure of any employer to furnish a statement or to furnish a false or fraudulent statement. It states that for each such failure there shall be a fine of $1000.00 or imprisonment of not more than one year or both. Section 1626 (b) provided a civil penalty for the same offenses set out in subsection (a) and subsection (c) provided a civil penalty for failure of an employer "to make return or pay the tax." Here again, as is common throughout the Code, where criminal penalties are provided, civil penalties are also prescribed. The failure of an employer to file a return may constitute a failure to file a statement within the meaning of subsection (a). It should be noted that Section 1622 (d) provides that if the employer fails to deduct and withhold, and thereafter the tax is paid, the tax so collected shall not be collected again from the employer. However, this subsection states that the employer is not relieved from liability or any penalties or additions to the tax otherwise applicable. This is in contrast to Section 143 (e) which relieves a withholding agent who withholds taxes of a non-resident alien from liability to penalties. The existence of this section is again indicative of the fact that if Congress had intended penalties to apply for the failure to furnish information under Section 147, then a similar section of the Act would have been enacted.[21]

There are also strong policy reasons for the requirement of a severe penalty in the case of a withholding agent. First, he collects money for the Government and if he fails to furnish an employee a receipt it would be difficult for the employee to check both on the amount of tax withheld

[21] Regulation 116, Section 405.601, prescribes a Form 941 for the payment to the Government of the income tax withheld. This form must be verified by written declaration that it is made under the penalties of perjury. A Form W-3 which lists the number of withholding statements forwarded must be filed, but is not a counterpart of Form 1096, since it is neither signed nor verified by written declaration.

and also on the amount of his income. Especially is this true since any person whose gross income consists solely of salary, wages or similar compensation for personal services rendered is not required to keep books and records showing the amount of his income,[22] and may at his election use a simplified return, Form 1040A, provided that his gross income is less than $5,000.00 and his income from sources other than wages does not exceed $100.00.[23] These Regulations remove the burden of keeping records from the employee to the employer. The failure of the employer to furnish these statements would nullify the effectiveness of these Regulations. Further, both former Section 1626 and present Section 1633 of the Act specifically provide a criminal and civil penalty "for each such failure". If Congress had deemed it advisable to provide a penalty for each failure to comply with Section 147 in a given year the statute specifically could have stated that fact. Further, the fact that Section 1626 was enacted subsequent to Sections 145 and 147 and that Congress found it necessary to include the "for each such failure" clause in Section 1626, would indicate that the failure to comply with Section 147 could not constitute more than one offense per year. The fact that Section 1625 (b) allows withholding statements to be treated as an information return is an indication that Congress did not mean for the word "return" under this Section to be used in a technical sense, for nowhere in this Act other than the penalty section and in this Section does it refer to the word "return".

The Current Tax Payment Act of 1943[24] amended Section 145 (a) of the Code by making it a criminal offense to fail to file a declaration of estimated tax. There would have been no need for this amendment unless Congress had recognized the fact that the word "return" was a specific type of individual income return. If Congress had believed

[22] Regulation 111, Section 29.54-1.
[23] Regulation 111, Section 29.51-2.
[24] C. 120, sec. 5 (c), 57 Stat. 144.

that the word "return" was broad enough to include any type of information required to be filed under the Code, then the failure to file a declaration would have been an offense under Section 145 before the amendment. In other words, the word "return" in 145 (a) would have been broad enough to indicate a "declaration" of estimated tax. Since, however, Congress did not think it was broad enough to include such a "declaration," it follows that the word "return" is not broad enough to include any information required under Section 147.

In 1949 Congress in Public Law 271[25] amended Section 3809 of the Code. The amendment to the section gave the Commissioner authority to eliminate the oath in the case of corporate, fiduciary, partnership, estate and gift tax returns. Here again there is a recognition by Congress that a "return" under Section 145 must be a return under oath or one containing a verification in lieu of an oath.

These statutes make it apparent that Congress in enacting the various Revenue Acts has always considered a "return" to be a document filed either under oath or filed under a declaration that the subscriber is subject to the penalties of perjury. The historical background of the income tax law also indicates that there can be only one "return" per individual or taxable unit during a given taxable period and that any other statements which are required to be filed by others merely become a part of this annual return.

CONCLUSION.

For the reasons stated above, it is submitted that the judgment of the District Court in this case should be affirmed.

Respectfully submitted,

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[25] C. 517, sec. 4 (a), 63 Stat. 667.

APPENDIX.

Internal Revenue Code:

Sec. 145. Penalties.

(a) **Failure to file return, submit information, or pay tax.** Any person required under this chapter to pay any estimated tax or tax, or required tax by law or regulations made under authority thereof to make a return or declaration, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any estimated tax or tax imposed by this chapter, who wilfully fails to pay such estimated tax or tax, make such return or declaration, keep such records, or supply such information, at the time or times required by law or regulation, shall, in addition to other penalties provided by law, be guilty of misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) **Failure to collect and pay over tax, or attempt to defeat or evade tax.** Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) Any individual who willfully makes and subscribes a return which he does not believe to be true and correct as to every material matter, shall be guilty of a felony, and, upon conviction thereof, shall be subject to the penal-

ties prescribed for perjury in section 125 of the Criminal Code.

(d) **Person defined.** The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

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Sec. 147. Information at source.

(a) **Payments of $500 or more.** All persons, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, and employers, making payment to another person, of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments described in section 148 (a) or 149), of $500 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Commissioner, under such regulations and in such form and manner and to such extent as may be prescribed by him with the approval of the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

(b) **Returns regardless of amount of payment.** Such returns may be required, regardless of amounts, (1) in the case of payments of interest upon bonds, mortgages, deeds of trust, or other similar obligations of corporations, (2) in the case of payments of interest upon obligations of the United States or any agency or instrumentality thereof, and (3) in the case of collections of items (not payable

in the United States) of interest upon the bonds of foreign countries and interest upon the bonds of and dividends from foreign corporations by persons undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange.

(c) **Recipient to furnish name and address.** When necessary to make effective the provisions of this section the name and address of the recipient of income shall be furnished upon demand of the person paying the income.

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Treasury Regulation 111, promulgated under the Internal Revenue Code. Sec. 29.145-1. Penalties.

The penalties provided for in section 145 cannot be assessed but are enforceable only by suit or prosecution. For limitations on prosecutions, see section 3748 (paragraph 87 of the Appendix to these regulations). The willful failure of a taxpayer to give information required in his return as to advice or assistance rendered in the preparation of the return, and the willful failure of the person preparing a return for another to execute the sworn statement required with reference thereto, make such persons subject to the penalties imposed by section 145 (a). An individual who willfully makes and subscribes a return which he does not believe to be true and correct as to every material matter, is guilty of a felony, and, if convicted, may be fined not more than $2,000 and imprisoned not more than five years (see Criminal Code, section 125, 18 U. S. C., 1940 ed., 231) (now 18 U. S. C., § 1621). The privilege against incrimination in the fifth amendments to the Constitution is not a defense to a charge of failure to file a return, and does not authorize a refusal to state the amount of income, though the taxpayer's income was made through crime.

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Sec. 29.147-1. Return of Information as to Payment of $600 ($500 for Years Prior to 1948).

All persons making payment to another person of fixed or determinable income of $500 or more in any calendar year prior to 1948, and all persons making payment to another person of such income of $600 or more in any calendar year after 1947 must render a return thereof for such year on or before February 15 of the following year except as specified in sections 29.147-3 to 29.147-5, inclusive. A return shall be made in each case on Form 1099, accompanied by transmittal Form 1096 showing the number of returns filed, except that the return with respect to distributions to beneficiaries of a trust or of an estate shall be made on Form 1041 in lieu of Forms 1099 and 1096. Returns of information on Forms 1096, 1099, and 1099L should be filed with the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Mo.[26] For place of filing Form 1041 see section 53. The street and number where the recipient of the payment lives should be stated, if possible. If no present address is available, the last known post-office address must be given. Although to make necessary a return of information the income must be fixed or determinable, it need not be annual or periodical. (See section 29.143-2.)

Sums paid in respect of life insurance, endowment, or annuity contracts which are required to be included in gross income under sections 29.22 (b) (1)-1, 29.22 (b) (2)-1, and 29.22 (b) (2)-2 come within the meaning of the term "fixed or determinable income" and are required to be reported in returns of information as required by this section, except that payments in respect of policies surrendered before maturity and lapsed policies need not be reported.

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[26] Prior to the amendment which was published in the Federal Register on February 24, 1949, (T. D. 5687, 1949-1 Cum. Bull. 9, 32), the address of the Processing Division given in the regulation was "260 East One Hundred and Sixty-first Street, New York 51, N. Y."

Fees for professional services paid to attorneys, physicians, and members of other professions come within the meaning of the term "fixed or determinable income" and are required to be reported in returns of information as required by this section.

For the purpose of a return of information, an amount is deemed to have been paid when it is credited or set apart to the taxpayer without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and which is made available to him so that it may be drawn at any time, and its receipt brought within his own control and disposition.